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March 23, 2018

VIA HAND-DELIVERY

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Federal Communications Commission
Office of the Secretary
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Room TW-A325
Washington, DC 20554

Lisa Saks, Deputy Chief
Lia Royle, Commission Counsel
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Enforcement Bureau
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Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**Re: CenturyLink Communications, LLC and Level 3 Communications, LLC v. Birch
Communications, Inc., Docket No. 18-73, File No. EB-18-MD-002 – Formal Complaint**

Dear Secretary Dortch and Commission Staff:

Enclosed please find the Formal Complaint and exhibits thereto submitted by CenturyLink Communications, LLC and Level 3 Communications, LLC in connection with the above-referenced proceeding. Pursuant to Section 11-2(b) of the Protective Order, please note that the following materials contain Confidential Information subject to the Protective Order: Pages 10–13 and 15–20 of the Formal Complaint (included within the Discussion, Count I, Count II, and Prayer for Relief sections); Pages 27–31 and 36 of the Legal Analysis in Support of Formal Complaint (Tab A); and Exhibits A (Attachment 1), N (and attachments 1 through 7 thereto), and O.

We appreciate your consideration. Please call me if you have any questions or need additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Chuck M. Steese". The signature is fluid and cursive, with the first name "Chuck" and last name "Steese" clearly legible.

Chuck Steese

CC: Timothy Boucher, Esq.
Adam Sherr, Esq.
Cherie R. Kiser, Esq.
Thorn Rosenthal, Esq.

PUBLIC VERSION

**Before the
Federal Communications Commission
Washington, DC 20554**

| | | |
|----------------------------------|---|-----------------------|
| In the Matter of |) | |
| |) | Docket No. 18-73 |
| CenturyLink Communications, LLC |) | File No. EB-18-MD-002 |
| and Level 3 Communications, LLC, |) | |
| |) | |
| Complainants, |) | |
| |) | |
| v. |) | |
| |) | |
| Birch Communications, Inc., |) | |
| |) | |
| Defendant. |) | |

FORMAL COMPLAINT

March 23, 2018

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VOLUME II – Exhibits

PUBLIC VERSION

**Before the
Federal Communications Commission
Washington, DC 20554**

| | | |
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| In the Matter of |) | |
| |) | Docket No. 18-73 |
| CenturyLink Communications, LLC, and |) | File No. EB-18-MD-002 |
| Level 3 Communications, LLC, |) | |
| |) | |
| Complainants, |) | |
| |) | |
| v. |) | |
| |) | |
| Birch Communications, Inc., |) | |
| |) | |
| Defendant. |) | |
| |) | |

FORMAL COMPLAINT

INTRODUCTION AND SUMMARY

Pursuant to Sections 201 and 205–209 of the Communications Act (“Act”), 47 U.S.C. §§ 201, 205–209, and Sections 1.720, *et seq.* of the Commission’s Rules, 47 C.F.R. §§ 1.720 *et seq.*, Complainants CenturyLink Communications, LLC (“CenturyLink”) and Level 3 Communications, LLC (“Level 3”) (collectively, “Petitioners”) respectfully submit this Formal Complaint against Birch Communications, Inc. (“Birch”) premised upon both CenturyLink’s March 7, 2017 Informal Complaint against Birch, and a primary jurisdiction referral from the United States District Court for the District of Delaware.

For purposes of this dispute, Petitioners operate as interexchange carriers (“IXCs”) providing long-distance services throughout the United States. Birch is a competitive local exchange carrier (“CLEC”) that charges Petitioners for switched access services pursuant to its filed interstate access tariff.

The crux of Petitioners' Complaint is that Birch's aggregate switched access charges exceed the interstate access rates assessed by the competing incumbent local exchange carrier ("ILEC"), thereby violating the Commission's CLEC Benchmark Rule set forth in 47 C.F.R. § 61.26 (hereafter the "CLEC Benchmark Rule"). In Count I, Petitioners therefore respectfully request that the Commission find that Birch's excessive switched access charges violate Commission rules and orders, and constitute an unjust and unreasonable practice in violation of Section 201(b). Because Birch's excessive access charges render its filed interstate access tariff void *ab initio*, Count II seeks a determination that Birch violated Section 201(b) on separate grounds by assessing switched access charges on Petitioners without a valid tariff or agreement in effect.

The CLEC Benchmark Rule prohibits CLECs such as Birch from imposing aggregate switched access charges that exceed the competing ILEC's switched access benchmark rates. *All* switched access charges, no matter how composed (e.g., as a usage-based or flat rate charge, as a single rate or as a combination of different rates whether those rates be usage-based or flat fee, etc.), are capped by the applicable ILEC benchmark rates. In this case, Birch admits that it assesses a single composite usage-based switched access charge that equals the competing ILEC's benchmark rate, *but in addition* imposes a flat-rate Presubscribed Interexchange Carrier Charge (the "PICC"). Although it is billed separately, the PICC makes Birch's aggregate access rates approximately *ten-times higher* than the competing ILEC's access charges.

Birch contends that its aggregate access charges are lawful because it mistakenly believes that the PICC, as opposed to its usage-based switched access charge, is not subject to the CLEC Benchmark Rule. Accordingly, the central issue in this dispute is whether the PICC constitutes a switched access rate element that must be assessed within the benchmark rate cap. If the PICC is subject to the CLEC Benchmark Rule—an inescapable conclusion from the Commission's

orders and findings over many years—then Birch’s aggregate access charges are unlawful and Petitioners’ damages can be readily calculated with certainty.

Petitioners therefore respectfully request that the Commission find that Birch’s assessment of the PICC causes its aggregate access charges to violate Commission rules and orders, and constitutes an unjust and unreasonable practice in violation of Section 201(b). Petitioners also request that the Commission find Birch’s interstate access tariff void *ab initio* and invalid from the time of issuance, and that Birch was unauthorized to assess any access charges on Petitioners without a valid tariff in place. Based upon these Communications Act violations, Petitioners request that the Commission award them money damages and declaratory relief as detailed below.

PARTIES

1. CenturyLink is a Delaware limited liability company with its principal place of business at 931 14th Street, Suite 1230, Denver, Colorado 80202 and telephone number: (303) 992-1400. In addition to information services, video services, and other offerings not relevant here, CenturyLink offers various telecommunications services throughout the nation. This Complaint concerns Birch’s assessment of unlawful switched access charges to CenturyLink in connection with its activities as an IXC providing interstate long distance services.¹ Pursuant to 47 C.F.R. § 1.721(a)(3), the name, address, and telephone number of CenturyLink’s attorneys are listed on this Complaint’s cover page.

2. Level 3 is a Delaware limited liability company with its principal place of business at 1025 Eldorado Boulevard, Broomfield, Colorado 80021 and telephone number: (720) 888-2750. In addition to information services, video services, and other offerings not relevant here, Level 3

¹ See Exhibit A, Joint Stipulation of Facts at ¶¶ 1, 4.

offers various telecommunications services throughout the nation. Level 3 became a wholly owned subsidiary of CenturyLink, Inc., the CenturyLink parent company that also wholly owns CenturyLink Communications, LLC, on November 1, 2017. This Complaint concerns Birch's assessment of unlawful switched access charges to Level 3 in connection with its activities as an IXC providing interstate long distance services.² Pursuant to 47 C.F.R. § 1.721(a)(3), the name, address, and telephone number of Level 3's attorneys are listed on this Complaint's cover page.

3. Birch is a Georgia corporation with its principal place of business at 320 Interstate North Parkway, Atlanta, Georgia 30339 and telephone number: (866) 424-2600. Birch operates as a non-rural CLEC and provides interstate switched access services to CenturyLink and Level 3 for long distance calls pursuant to its filed access tariff.³

PROCEDURAL HISTORY

4. On March 7, 2017, CenturyLink submitted an Informal Complaint to the Commission asking it to determine that the switched access charges Birch invoiced and assessed to CenturyLink, including the PICC, for long distance calls, violated the CLEC Benchmark Rule and were otherwise unlawful.⁴ Birch filed its response to CenturyLink's Informal Complaint (the "carrier's report" referenced in 47 C.F.R. § 1.718) on September 28, 2017.⁵

² See *id.* at ¶¶ 2, 4.

³ *Id.* at ¶¶ 1–3.

⁴ Exhibit B, "Informal Complaint by *CenturyLink Communications, LLC v. Birch Communications/Access Integrated Networks* and Request for Mediation" (March 7, 2017); see also Exhibit C, Affidavit of Martin J. Estevao at ¶ 4.

⁵ Exhibit D, "Re: EB-17-MDIC-0001, *CenturyLink Communications, LLC v. Birch Communications, Inc.*" (September 28, 2017) ("Birch Communications, Inc. . . . , by its attorneys, respectfully submits this response to the Informal Complaint filed by CenturyLink Communications, LLC . . . dated March 7, 2017."); see also Exhibit C at ¶ 5.

5. For several months, CenturyLink and Birch interacted with the Commission in an attempt to mediate and resolve their dispute. After the parties reached an impasse, Birch filed a lawsuit in the United States District Court for the District of Delaware alleging nonpayment of the same charges challenged by CenturyLink in its Informal Complaint.⁶ CenturyLink and Birch then jointly obtained an order from the court staying all proceedings and referring issues to the Commission under the doctrine of primary jurisdiction.⁷

6. In addition to addressing the fundamental PICC-based CLEC Benchmark Rule contentions at issue herein, CenturyLink's Informal Complaint maintained that Birch separately violated the CLEC Benchmark Rule by imposing remote-host and 8YY database charges in excess of those imposed by competing ILECs. While the federal court order also referred these issues, this Complaint does not concern these charges.⁸

47 C.F.R. § 1.721(a)(8) CERTIFICATION

7. Petitioners certify that they have discussed and attempted to resolve their dispute in good faith prior to the filing of this Formal Complaint. Indeed, CenturyLink and Birch worked together for nearly a year during a confidential Informal Complaint mediation process in attempts to reach a voluntary settlement, and even included Commission Staff in their

⁶ See generally Exhibit E, Complaint (Doc. 1), *Birch Communications, Inc. v. CenturyLink Communications, LLC*, No. 17-1367-JEJ; see also Exhibit B at ¶ 6.

⁷ Exhibit F, Order Granting Unopposed Motion to Stay Proceedings Pursuant to Doctrine of Primary Jurisdiction (Doc. 16), *Birch Communications, Inc. v. CenturyLink Communications, LLC*, No. 17-1367-JEJ; see also Exhibit C at ¶ 7.

⁸ CenturyLink has attempted to resolve the issues relating to these charges. As explained below, however, if the Commission finds that Birch's interstate access tariff is void *ab initio*, CenturyLink seeks as retroactive damages all payments made for switched access services, including any payments made in connection with the invalid host-remote and 8YY database charges.

negotiations. Level 3—CenturyLink’s wholly-owned subsidiary—recently joined the parties’ settlement efforts. The parties were unable to resolve their differences as to the overarching legal question of whether the PICC constitutes a switched access rate element that must be assessed within the benchmark rate cap. On March 5, 2018, counsel for Petitioners delivered certified letters to Birch’s attorneys and registered agents outlining the identical PICC-based arguments maintained by CenturyLink and discussed between CenturyLink and Birch for over a year.⁹ Petitioners’ certified letter indicated a March 9, 2018 response date, which is a reasonable time period considering the parties’ extensive negotiations and deliberations on what amounts to a legal determination on the CLEC Benchmark Rule’s application to the PICC. At this point, given the protracted settlement efforts and related discussions, Petitioners believe that the only way to resolve the dispute is through resolution by the Commission and that any additional steps would be futile.

JURISDICTION

8. The Commission has jurisdiction over this Complaint under Sections 201 and 205–209 of

⁹ Exhibit G, “Re: CenturyLink Communications, LLC and Level 3 Communications, LLC v. Birch Communications, Inc.” (March 5, 2018); *see also* Exhibit C at ¶ 8. On March 9, 2018 Birch responded and claimed, *inter alia*, that Level 3 had not timely complained within 90 days as purportedly required by its tariff. Exhibit H, “Re: CenturyLink Communications, LLC and Level 3 Communications, LLC v. Birch Communications, Inc.” (March 9, 2018); *see also* Exhibit C at ¶ 9. The Commission and courts have consistently held such tariff provisions unenforceable because 47 U.S.C. § 415 gives customers two years to raise disputes. *See, e.g., In the Matter of Sprint Commc’ns Co. L.P., Complainant*, 26 F.C.C. Red. 10780, 10786 (2011) (“[The] ‘Billing Disputes’ provision requiring carriers to dispute bills within 90 days or waive ‘any and all rights and claims with respect to the bill and the underlying dispute’ is unreasonable. This provision contravenes the two-year statute of limitations in the Communications Act, and, by its terms, purports unilaterally to bar a customer from exercising its statutory right to file a complaint within that limitations period.”) (citing *PAETEC Commc’ns, Inc. v. MCI Commc’ns Servs., Inc.*, 712 F. Supp. 2d 405, 416 (E.D. Pa. 2010) and *MCI Worldcom Network Servs., Inc. v. Paetec Commc’ns, Inc.*, 204 F. App’x 271, 272 (4th Cir. 2006)).

the Act, 47 U.S.C. §§ 201, 205–209, and pursuant to the primary jurisdiction referral by the United States District Court for the District of Delaware in *Birch Communications, Inc. v. CenturyLink Communications, LLC*, No. 17-1367-JEJ. In the referral order, the court stayed all proceedings and retained jurisdiction over the underlying dispute.

FACTS IN SUPPORT OF COMPLAINT

I. RELEVANT BACKGROUND

9. On October 23, 2008, Birch filed an Access Services Tariff with the Commission that took effect the very next day (the “Tariff”).¹⁰

10. Birch charges Petitioners for switched exchange access services pursuant to the Tariff.¹¹ Birch has never negotiated or entered into a commercial agreement for access rates with either CenturyLink or Level 3.¹² The parties therefore agree that this dispute pertains to the application of the Commission’s CLEC Benchmark Rule in 47 C.F.R. § 61.26(c).¹³

11. Section 5 of the Tariff contains the rates purportedly reflecting the aggregate switched access services offered by Birch. Specifically, Section 5.4.3 contains the single usage-based switched access rate Birch charges for each major ILEC territory.¹⁴ Over time, these rates have changed¹⁵ as ILECs reduced their rates pursuant to the *Connect America Fund* Order.¹⁶

¹⁰ Exhibit I, Birch Communications Access Services Tariff, Tariff FCC No. 1, at 1 (“Title Page”) (providing that the Tariff was “Issued: October 23, 2008” and “Effective: October 24, 2008”); *see also* Exhibit C at ¶ 10.

¹¹ Exhibit A at ¶¶ 1–2.

¹² *Id.* at ¶¶ 6–9.

¹³ *Id.* at ¶¶ 6–7.

¹⁴ Exhibit I at § 5.4.3(A); *see also* Exhibit A at ¶ 12.

¹⁵ *See* Exhibits J (Birch Communications 2014 Rate Sheets), K (Birch Communications 2015

12. At all relevant times, Birch’s single usage-based rates in Section 5.4.3 have equaled the benchmark rates assessed by the competing ILECs.¹⁷

13. In addition to the Section 5.4.3 usage-based switched access charges, however, Section 6 of the Tariff imposes “Miscellaneous Charges,” which includes a “Presubscribed Interexchange Carrier Charge” or PICC.¹⁸ Section 6.3 states:

6.3 Presubscribed Interexchange Carrier Charge

The Presubscribed Interexchange Carrier Charge (PICC) is a monthly, flat-rated charge assessed to the interexchange carrier for each presubscribed local exchange service line or trunk. The PICC will be based on a monthly snapshot of end user accounts. No fractional debits or credits will be created. Additionally PICCs will be assessed to end user customers on “no-PIC” lines.¹⁹

14. Section 6.3 imposes the flat-rate \$2.50 monthly PICC per line or trunk on multiline businesses.²⁰

15. The PICC contained in Section 6.3 was included in Birch’s initial tariff filing that was issued on October 23, 2008 and effective on October 24, 2008.²¹

16. When Birch submitted subsequent rate sheets for the Tariff, Birch filed them with at least 15 days’ notice pursuant to 47 U.S.C. § 204; however, Birch never submitted a tariff page

Rate Sheets), L (Birch Communications 2016 Rate Sheets) and M (Birch Communications 2017 Rate Sheets); *see also* Exhibit C at ¶ 11.

¹⁶ *See generally In the Matter of Connect America Fund*, 26 F.C.C. Rcd. 17663 (2011).

¹⁷ Exhibit N, Affidavit of Tami Spocogee at ¶ 7; *see also* Exhibit A at ¶ 15.

¹⁸ Exhibit I at § 6.3; Exhibit A at ¶ 16; Exhibit N at ¶ 8.

¹⁹ Exhibit I at § 6.3.

²⁰ *Id.* at § 6.3; Exhibit A at ¶ 16; Exhibit N at ¶ 8.

²¹ *See id.* at 1 (“Title Page”), § 6.3.

containing the PICC with the 15-day notice.²²

17. Although the PICC is billed under the Miscellaneous Charges section of the Tariff, the FCC has found that it is a type of switched access charge.²³

18. Birch's principal operations are within the BellSouth region where Birch competes with AT&T (f/k/a and hereinafter "BellSouth"). Birch only assesses PICC charges in the BellSouth region.²⁴

19. Section 6 of the BellSouth interstate access tariff contains switched access charges broken down by individual rate elements that, collectively, constitute the ILEC benchmark rate in the BellSouth region.²⁵

20. From 2014 to the present, none of the competing ILECs in Birch's serving territories, including BellSouth in the BellSouth region, had interstate access tariffs containing a PICC.²⁶

21. During the relevant timeframes, Birch's single usage-based rate in Section 5.4.3 of the Tariff equaled BellSouth's switched access rates in Section 6 of its tariff, i.e., the competing

²² See Exhibits J (2014 rate sheets providing 15-day notice for revised Section 5.4.3(A) but not for the original Section 6.3 containing the PICC), K (same for 2015 rate sheets), L (same for 2016 rate sheets), and M (same for 2017 rate sheets).

²³ See, e.g., *In the Matter of Commc'ns Options, Inc.*, 22 F.C.C. Rcd. 13680, 13682 (2007) ("PICC . . . charges are 'access' charges that allow certain local exchange carriers to recover the telecommunications service provider costs of enabling end users to make and receive interexchange calls.") (footnote omitted); *In the Matter of Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, CC Docket No. 96-262, 16 F.C.C. Rcd. 9923, 9945 (2001).

²⁴ See Exhibit A at ¶ 11; Exhibit N at ¶ 11.

²⁵ Exhibit N at ¶ 5; see also Exhibit A at ¶ 13.

²⁶ Exhibit A at ¶ 14; Exhibit N at ¶ 19.

ILEC benchmark rate cap.²⁷

22. In addition to the usage-based rates contained in Section 5.4.3 of the Tariff, which correspond with the benchmark rate, Birch also charges the PICC.²⁸

23. When the PICC is translated into a per-minute rate and added to Birch's usage-based rates in the BellSouth region, the actual per-minute rates become *almost ten times higher* for CenturyLink.²⁹

24. The parties agree: If the Birch PICC were included in the calculation of the Birch switched exchange access service charge for the BellSouth region, the Birch switched exchange access service charge would exceed the benchmark rate by the amount of the PICC.³⁰ Thus, the parties agree that Birch assesses the PICC above and beyond the BellSouth benchmark rates.

II. DISCUSSION

25. Birch erroneously believes that it can charge the usage-based rates contained in Section 5.4.3 of the Tariff, which equal the benchmark rate, *plus* the PICC. The FCC has made plain that the PICC is an access charge that must be incorporated into the benchmark rate cap.

26. The PICC charges Birch assessed to Petitioners from February 2015 to the present caused Birch's aggregate switched access charges to be billed significantly above those assessed by BellSouth, the competing ILEC in the BellSouth region.³¹

27. For example, in March 2015 Birch originated and terminated over [REDACTED] minutes of

²⁷ See *id.* at ¶ 15; Exhibit N at ¶ 7.

²⁸ See Exhibit A at ¶ 16; Exhibit N at ¶ 8.

²⁹ Exhibit N at ¶¶ 9–10.

³⁰ Exhibit A at ¶ 17.

³¹ Exhibit N at ¶ 11.

traffic for CenturyLink in the BellSouth region for which Birch billed and CenturyLink paid [REDACTED] for usage-based switched access services from Section 5.4.3 of the Tariff.³² In this same month, Birch separately billed CenturyLink [REDACTED] in PICC charges from Section 6 of the Tariff, which CenturyLink paid.³³ Thus, in the aggregate, Birch assessed switched access charges that violated the rate cap set by the CLEC Benchmark Rule and caused CenturyLink damages.

28. The same is true as to Level 3, which Birch also billed PICC charges in the BellSouth region over and above the usage-based rates tied to the ILEC benchmark as contained in Section 5.4.3 of the Tariff.³⁴

29. From March 2015 (two years before the Informal Complaint was initiated) until January 2017, CenturyLink paid Birch [REDACTED] in PICC charges.³⁵ Given the parties' stipulation that Birch's usage-based rates in Section 5.4.3 of the Tariff mirror the benchmark rates, the excessive charges assessed to CenturyLink equal these billed PICC charges (plus interest).³⁶

30. On January 6, 2017, CenturyLink sent Birch a dispute notice challenging the legality of Birch's aggregate switched access charges.³⁷ Before that date, CenturyLink had not withheld

³² *Id.* at ¶ 10.

³³ *Id.* at ¶ 15; *see also* Exhibit A at ¶ 18 (attaching the parties' chart as Attachment 1 reflecting amounts billed to CenturyLink and Level 3 for PICC charges over benchmark rates).

³⁴ Exhibit N at ¶ 11.

³⁵ Exhibit A at ¶ 18 (attaching the parties' chart as Attachment 1 reflecting amounts billed to CenturyLink and Level 3 for PICC charges over benchmark rates).

³⁶ *Id.* at ¶¶ 15–18.

³⁷ *See* Exhibit O, "Re: CenturyLink Dispute of Birch Communications/Access Integrated Networks Switched Access Charges" (January 6, 2017); *see also* Exhibit C at 12.

payments on access charges billed by Birch due to these benchmark violations. After that date, CenturyLink did dispute and withhold payments on this basis.³⁸ From that time until January 2018, CenturyLink withheld payment on [REDACTED] in PICC charges and [REDACTED] in associated late payment charges.³⁹

31. In November 2017, CenturyLink, Inc., the CenturyLink parent company that also wholly owns CenturyLink Communications, LLC, acquired Level 3 as a wholly-owned subsidiary.⁴⁰

32. Because Level 3 did not participate in CenturyLink's March 7, 2017 Informal Complaint, Level 3's damages arise from the two-year period preceding this Formal Complaint.

33. From March 2016 until February 2018, Birch billed Level 3 [REDACTED] in PICC charges, of which Level 3 paid [REDACTED].⁴¹ Again, given the parties' stipulation that Birch's usage-based rates in Section 5.4.3 of the Tariff equal the benchmark rate, the excessive charges assessed to Level 3 equal these billed PICC charges.⁴²

34. Because the PICC is a switched access charge rate element that must be assessed within the benchmark rate cap, Petitioners seek a decision from the Commission that Birch's aggregate switched access charges wrongfully exceed the ILEC benchmark rate in violation of the Commission's orders and its CLEC Benchmark Rule contained in 47 C.F.R. § 61.26.

³⁸ See Exhibit A at ¶ 18 (including chart as Attachment 1 showing no payment on the December 2016 invoice, but that payment was not due until January 8, 2017).

³⁹ *Id.* While the parties stipulate that Birch billed CenturyLink these late payment charges, CenturyLink maintains that Birch incorrectly calculated these charges. See Exhibit N at ¶ 18.

⁴⁰ See Exhibit N at ¶ 4.

⁴¹ Exhibit A at ¶ 18 (Attachment 1).

⁴² *Id.* at ¶¶ 15–18.

35. In addition to the PICC-based overpayment damages set forth above, Petitioners also request a ruling that they are not obligated to pay any disputed PICC charges, including, but not limited to, [REDACTED] in PICC charges billed to CenturyLink through January 2018, or any associated late payment charges [REDACTED]

36. Pursuant to *AT&T v. Great Lakes Comnet, Inc. et al*, EB Docket No. 14-222, 30 F.C.C. Rcd. 2586, 2595 (Rel. Mar. 18, 2015), Petitioners also seek an order that Birch's excessive aggregate switched access charges render the Tariff void *ab initio*, and therefore that Birch was unauthorized to bill them for any switched access services without a valid tariff or commercial agreement in effect.

37. From March 2015 to January 2018, CenturyLink paid Birch [REDACTED] in total switched access charges.⁴³ Similarly, from March 2016 to February 2018, Level 3 paid Birch [REDACTED] in total switched access charges.⁴⁴ If the Commission finds the tariff void *ab initio*, the Commission should award these amounts as damages.⁴⁵ Petitioners also seek interest on the damages they have suffered.⁴⁶

⁴³ Exhibit N at ¶ 12.

⁴⁴ *Id.* at ¶ 13.

⁴⁵ If the Commission agrees that Birch's Tariff is rendered void *ab initio*, and thus invalidates Birch's ability to bill for any switched access services, the Commission should add to this amount any later payments made by CenturyLink for switched access services, including any settlement payments for disputed 8YY and host-remote additive charges. In a subsequent filing and/or supplemental complaint, Petitioners will update these damages numbers to include payments made in the months following the filing of this Complaint. Petitioners will update their interest calculations at the same time.

⁴⁶ For interest calculations, the Commission "relies on the interest rates specified by the IRS because those rates are readily available, easily applied, and periodically revised." *In the Matter of 1993 Annual Access Tariff Filings 1994 Annual Access Tariff Filings*, 20 F.C.C. Rcd. 6077, 6085–87 (2005) ("Interstate access customers have been denied the use of the funds they overpaid . . . , a factor we must consider in determining an appropriate interest rate.").

COUNT I

EXCEEDING THE ILEC BENCHMARK Violation of 47 U.S.C. § 201(b)

38. Petitioners incorporate by reference all of the preceding paragraphs stated above as though fully set forth herein.

39. The Commission's CLEC Benchmark Rule prohibits Birch from assessing aggregate switched access charges at a rate that exceeds the benchmark rate charged by the competing ILEC—BellSouth. The CLEC Benchmark Rule applies to *all* charges for switched access services, and any such charges must be incorporated and capped within the benchmark rate.

40. The PICC is universally recognized as a switched access charge rate element that is subject to the CLEC Benchmark Rule and must be assessed within the benchmark rate cap.

41. Because Birch's usage-based access charges contained in Section 5.4.3 of the Tariff equal the BellSouth benchmark rate, the PICC causes Birch's aggregate access charges to wrongfully exceed the effective benchmark rate cap. This practice constitutes a violation of the CLEC Benchmark Rule and an unjust and unreasonable practice in violation of 47 U.S.C. § 201(b).

42. Birch's excessive aggregate access charges—specifically the PICC—caused CenturyLink [REDACTED] in overpayment damages.⁴⁷ Birch has stipulated to this as the amount that CenturyLink paid it for PICC charges since February 2015 and is in possession of the underlying invoices that support these calculations.

43. Birch's excessive aggregate access charges—specifically the PICC—caused Level 3

CenturyLink and Level 3 respectfully request that the Commission apply the applicable IRS interest rate for individual overpayments (set at four percent since 2016), which would result in "fair compensation for the use of money over time." *See id.* At the least, the IRS interest rate for corporate overpayments (set at three percent since 2016) should be applied.

⁴⁷ Exhibit A at ¶ 18 (Attachment 1).

44. [REDACTED] in overpayment damages.⁴⁸ Birch has stipulated to this as the amount that Level 3 paid it for PICC charges since February 2016 and is in possession of the underlying invoices that support these calculations.

45. In addition to these damages, Petitioners also request a ruling that they are not obligated to pay any disputed and unpaid PICC charges, including, but not limited to, [REDACTED] in PICC charges billed to CenturyLink through February 2018 and which CenturyLink did not pay, or any associated late payment charges [REDACTED] billed through February 2018), and the [REDACTED] which Level 3 did not pay in February 2018.⁴⁹ Once again, Birch has stipulated to the amounts that CenturyLink and Level 3 have disputed and did not pay relating to PICC since February 2015 and February 2016, respectively, and is in possession of the underlying invoices that support these calculations.

46. Petitioners also seek interest on the damages they incurred. CenturyLink seeks [REDACTED] in interest if the IRS interest rate for individual overpayments (4%) is applied; or [REDACTED] in interest if the IRS interest rate for corporate overpayments (3%) is applied.⁵⁰ Level 3 seeks in [REDACTED] interest if the IRS interest rate for individual overpayments (4%) is applied; or [REDACTED] in interest if the IRS interest rate for corporate overpayments (3%) is applied.⁵¹

⁴⁸ *Id.*

⁴⁹ *Id.* These excessive PICC charges continue to mount with additional billing periods.

⁵⁰ Exhibit N at ¶ 14.

⁵¹ *Id.* at ¶ 15.

COUNT II

ASSESSING ACCESS CHARGES WITHOUT A VALID TARIFF OR AGREEMENT Violation of 47 U.S.C. § 201(b)

47. Petitioners incorporate by reference all of the preceding paragraphs stated above as though fully set forth herein.

48. Birch assesses aggregate switched access charges—including the PICC—that wrongfully exceed the effective benchmark rate. A CLEC tariff containing aggregate switched access charges that exceed the benchmark must be de-tariffed and rendered void *ab initio*.

49. Because Birch’s Tariff is void *ab initio*, it was invalid and unlawful from the time of issuance. Without a valid tariff or negotiated agreement in place, Birch was not authorized to assess and collect any switched access charges from Petitioners.⁵² Birch’s assessment of switched access charges without a valid tariff or agreement in effect constitutes an unjust and unreasonable practice in violation of 47 U.S.C. § 201(b) separate and apart from Birch’s underlying violations of 47 C.F.R. § 61.26 addressed in Count I.

50. The PICC charges in Birch’s Tariff was never “deemed lawful” under 47 U.S.C. § 204(a)(3).

51. Petitioners are entitled to millions in retroactive refund damages for the entire amount Birch billed them pursuant to the Tariff during the relevant time frames.⁵³ As outlined above,

⁵² The parties have also stipulated that there is no commercial agreement between Birch and CenturyLink or Level 3 that governs the rates that Birch may charge to CenturyLink for switched exchange access service, and that this dispute pertains to the application of the Commission’s CLEC Benchmark Rule in 47 C.F.R. § 61.26(c). *Id.* at ¶¶ 6–9.

⁵³ *See* Exhibit N at *Id.* at ¶¶ 12–13. However, Petitioners do not include an exact, final damages number here because it continues to grow as Petitioners pay Birch’s switched access invoices each month. If permitted in a subsequent filing, Petitioners will update the damages numbers in this paragraph to include payments made in the months following the filing of this Complaint,

from March 2015 until January 2018, CenturyLink paid Birch [REDACTED] in total switched access charges, including the PICC. Level 3 paid Birch [REDACTED] in total switched access charges, including the PICC, from March 2016 until February 2018. While Birch has not stipulated to these numbers, it is in possession of the underlying invoices that support these conclusions and could easily perform the same calculations.

52. Petitioners also seek interest on the damages they incurred based on the current numbers referenced in Paragraph 50, to be later adjusted with respect to any further payments made. CenturyLink seeks [REDACTED] in interest if the IRS interest rate for individual overpayments (4%) is applied; or [REDACTED] in interest if the IRS interest rate for corporate overpayments (3%) is applied.⁵⁴ Level 3 seeks [REDACTED] in interest if the IRS interest rate for individual overpayments (4%) is applied; or [REDACTED] in interest if the IRS interest rate for corporate overpayments (3%) is applied.⁵⁵

RELATED CASE

53. Pursuant to 47 C.F.R. § 1.721(a)(9), Petitioners state that they have not filed a “separate action” against Birch with the Commission or any other government agency that is based on the same claim or same set of facts, in whole or in part. As explained above, CenturyLink did file an Informal Complaint with the Commission addressing, among other things, the same PICC-based contentions maintained herein. In addition, Birch filed a related lawsuit—*Birch Communications, Inc. v. CenturyLink Communications, LLC*, No. 17-1367-JEJ—in the U.S.

including any settlement payments made in connection with disputed 8YY and host-remote additive charges.

⁵⁴ *Id.* at ¶ 16.

⁵⁵ *Id.* at ¶ 17.

District Court for the District of Delaware. Section 207 of the Act prevents CenturyLink from filing counterclaims in the federal lawsuit because it initiated an informal complaint before the Commission. The present Formal Complaint stems from both the Informal Complaint and a stay and primary jurisdiction referral to the Commission in the federal lawsuit.

PRAYER FOR RELIEF

54. Petitioners respectfully request that the Commission issue an order finding (1) that Birch unjustly and unreasonably billed Petitioners for aggregate switched access charges at a rate that exceeds the applicable benchmark rate by the amount of the PICC in violation of the Commission's rules and orders; (2) that Birch must revise its tariff to provide for aggregate switched access rates that do not exceed the benchmark rate (in other words, to drop the PICC); (3) that Petitioners are not required to pay Birch the PICC, including any amount already assessed and disputed; and (4) that Birch's Tariff is deemed void *ab initio* and invalid from the date of issuance, and therefore that Birch was unauthorized to assess Petitioners any switched access charges.

55. To the extent that they are successful on Count I, Petitioners further request that the Commission award them damages in the amount of [REDACTED] for CenturyLink and [REDACTED] for Level 3.⁵⁶ These are the amounts Petitioners paid to Birch for PICC charges and the exact amounts that exceed the benchmark rate cap during the applicable timeframes.⁵⁷ Petitioners also seek interest in connection with these damages.⁵⁸

⁵⁶ Exhibit A at ¶ 18 (Attachment 1).

⁵⁷ *See id.* at ¶ 17.

⁵⁸ CenturyLink and Level 3 also seek interest for damages recoverable Under Count I as set forth in Exhibit N at ¶¶ 14–15.

56. In addition to these damages, Petitioners also request a ruling that they are not obligated to pay any disputed and unpaid PICC charges, including, but not limited to, [REDACTED] in PICC charges billed to CenturyLink through January 2018 which CenturyLink disputed and did not pay, or any associated late payment charges [REDACTED] through February 2018), and the [REDACTED] which Level 3 did not pay in February 2018.

57. To the extent that Petitioners are successful on Count II, they respectfully request that they be awarded damages in the amounts of [REDACTED] for CenturyLink, [REDACTED] for Level 3, plus any amounts billed and paid in subsequent months, including any payments made for disputed 8YY and host-remote additive charges.⁵⁹ These are the amounts Petitioners paid to Birch for switched access charges at a time when Birch's Tariff was void and no negotiated commercial agreement was in effect. Petitioners also seek interest in connection with these damages.⁶⁰

⁵⁹ *Id.* at ¶¶ 19, 21.

⁶⁰ CenturyLink and Level 3 also seek interest for damages recoverable Under Count II as set forth in Exhibit N at ¶¶ 16–17.

Respectfully submitted,

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March 23, 2018

TAB A

PUBLIC VERSION

**Before the
Federal Communications Commission
Washington, DC 20554**

| | | |
|-------------------------------------|---|-----------------------|
| In the Matter of |) | |
| |) | Docket No. 18-73 |
| CenturyLink Communications, LLC and |) | File No. EB-18-MD-002 |
| Level 3 Communications, LLC |) | |
| |) | |
| Complainants, |) | |
| |) | |
| v. |) | |
| |) | |
| Birch Communications, Inc., |) | |
| |) | |
| Defendant. |) | |

LEGAL ANALYSIS IN SUPPORT OF FORMAL COMPLAINT

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March 23, 2018

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SUMMARY AND BACKGROUND

Since Congress passed the Telecommunications Act of 1996, this Commission has administered numerous disputes involving CLECs using excessive switched access charges to fund their operations and build their networks.⁶¹ Since 2001, the Commission has taken a clear, unambiguous, and consistent position that—absent negotiated commercial arrangements with IXCs—CLECs are prohibited from assessing access charges in excess of those charged by the competing ILECs. Despite over a decade of precedent, the Commission must confront yet another such dispute.

CenturyLink Communications, LLC (“CenturyLink”) and Level 3 Communications, LLC (“Level 3”) (collectively, “Petitioners”) operate as interexchange carriers (“IXCs”) providing long-distance services throughout the United States.⁶² Birch Communications, Inc. (“Birch”) is a competitive local exchange carrier (“CLEC”) that charges Petitioners for switched access services in connection with long-distance calls pursuant to Birch’s filed interstate access tariff (the “Tariff”).⁶³ Birch’s aggregate switched access charges comprise various traditional usage-based rate elements, such as switching and transport charges, that are imposed via a single,

⁶¹ See, e.g., *In the Matter of Total Telecommunications Servs., Inc.*, 16 F.C.C. Rcd. 5726 (2001) (ruling that a CLEC’s access charges billed to AT&T were the product of a sham arrangement to inflate its rates); *In the Matter of Qwest Commc’ns Co., LLC, Complainant*, 26 F.C.C. Rcd. 8332 (2011) (holding that CLEC’s tariffed switched access charges were excessive and unlawful); *In the Matter of AT&T Servs. Inc. & AT&T Corp., Complainants*, 30 F.C.C. Rcd. 2586 (2015) (finding that CLEC violated the CLEC Benchmark Rule for switched access charges by billing at rates that were considerably higher than the rates charged by competing ILEC for the same services); *AT&T v. Great Lakes Comnet, Inc. et al*, EB Docket No. 14-222, 30 F.C.C. Rcd. 2586, 2595 (Rel. Mar. 18, 2015) (holding that CLEC tariff with rates above benchmark is *void ab initio*).

⁶² Complaint at ¶¶ 1–2 (Petitioners’ Formal Complaint, *supra*, will be referred to as “Compl.”).

⁶³ *Id.* at ¶¶ 1–3, 10; Exhibit I.

aggregated per minute rate, as well as one flat-rate access charge—the Presubscribed Interexchange Carrier Charge (the “PICC”).⁶⁴

In 2001, the Commission created a “bright-line rule” capping the amounts that CLECs can charge for interstate switched access services.⁶⁵ Now codified in 47 C.F.R. § 61.26, this bright-line rule prohibits a CLEC from assessing switched access charges at a rate exceeding the “benchmark” rate charged for similar services by the competing incumbent local exchange carrier or “ILEC” (the “CLEC Benchmark Rule”).⁶⁶ A CLEC tariff that fails to adhere to the CLEC Benchmark Rule is void *ab initio*.⁶⁷ In establishing the CLEC Benchmark Rule, the Commission sought to “ensure . . . that CLEC access charges are just and reasonable” and to “eliminate regulatory arbitrage opportunities that previously . . . existed with respect to tariffed

⁶⁴ Compl. at ¶¶ 11–14, 22; *see also, e.g., In the Matter of Commc’ns Options, Inc.*, 22 F.C.C. Rcd. 13680, 13682 (2007) (“PICC . . . charges are ‘access’ charges that allow certain local exchange carriers to recover the telecommunications service provider costs of enabling end users to make and receive interexchange calls.”) (footnote omitted).

⁶⁵ *See In the Matter of Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, CC Docket No. 96-262, 16 F.C.C. Rcd. 9923 ¶ 25 (Rel. April 27, 2001) (hereinafter “Seventh Report and Order”).

⁶⁶ *See id.* at ¶ 55; 47 C.F.R. § 61.26(c) (“The benchmark rate for a CLEC’s switched exchange access services will be the rate charged for similar services by the competing ILEC.”); *In the Matter of Establishing Just & Reasonable Rates for Local Exch. Carriers*, 22 F.C.C. Rcd. 17989, 17994 (2007) (“Section 61.26 allows competitive LECs to tariff interstate access charges if the charges are no higher than the rate charged for such services by the competing incumbent LEC (the benchmarking rule)”) (citing Seventh Report and Order); *N. Valley Commc’ns, L.L.C. v. AT&T Corp.*, No. 1:14-CV-01018-RAL, 2015 WL 11675666, at *1 (D.S.D. Aug. 20, 2015) (“The FCC regulates CLEC access charges by allowing CLECs to charge interstate access charges pursuant to a tariff with a rate no higher than the rate charged . . . by the competing ILEC (the CLEC Benchmark Rule).”) (citation and internal quotation marks omitted).

⁶⁷ *See In the Matter of AT&T Servs. Inc. & AT&T Corp., Complainants*, 30 F.C.C. Rcd. 2586, 2595 (2015) (“Under the Commission’s benchmark regime, a carrier is prohibited from filing a tariff with rates above the benchmark; doing so violates the Commission’s Rules and renders the prohibited tariff void *ab initio*.”).

CLEC access services.”⁶⁸ “[C]oncerned that . . . the higher CLEC rates may shift an inappropriate share of the carriers’ costs onto the IXC’s and, through them, the long distance market in general,”⁶⁹ the Commission tied CLEC access rates to the competing ILEC rates to “prevent CLECs from exploiting the market power in the rates that they tariff for switched access services.”⁷⁰

In its Order, the Commission did not require CLECs to charge the same individual rate elements or adhere to rigid rate structures for switched access services, but instead ruled “that the aggregate charge for these services, *however described in their tariffs*, cannot exceed our benchmark.”⁷¹ Intending only “to permit CLECs to receive revenues equivalent to those the ILECs receive *from IXCs*, whether they are expressed as per-minute or flat-rate charges,”⁷² the Commission further specified that the CLEC Benchmark Rule applies its per-minute cap “for *all* interstate switched access service charges.”⁷³ Therefore, as long as a charge is billed for switched access service, it must be captured within the CLEC’s overall aggregate charge subject to the CLEC Benchmark Rule and capped at the competing ILEC benchmark rate.

Although the PICC is universally recognized as a rate element for switched access service,⁷⁴ Birch charges it separately from the usage-based access charges contained in Section

⁶⁸ Seventh Report and Order at ¶¶ 2–3.

⁶⁹ *Id.* at ¶ 22.

⁷⁰ *See id.* at ¶ 34.

⁷¹ *Id.* at ¶ 55 (emphasis added).

⁷² *See id.* at ¶ 54 (emphasis in original).

⁷³ *See id.* (emphasis added).

⁷⁴ *See* Section I.C, *infra*.

5.4.3 of the Tariff—charges that *Birch admits already amount to the applicable benchmark rate*. Petitioners respectfully request that the Commission reject Birch’s attempt to salvage its PICC charge simply because it assesses it from a separate section of the Tariff; otherwise, CLECs could negate the CLEC Benchmark Rule simply by creating a “miscellaneous charge” section.

Longstanding judicial and Commission precedent establishes that the PICC constitutes an access charge rate element that must be included within a CLEC’s aggregate switched access charges under the CLEC Benchmark Rule.⁷⁵ In fact, immediately after introducing the CLEC Benchmark Rule for CLEC switched access services, the Seventh Report and Order confirmed that PICC charges are capped by the applicable benchmark rate:

By moving CLEC tariffs to the “rate of the competing ILEC” we do not intend to restrict CLECs to tariffing solely the per-minute rate that a particular ILEC charges for its switched, interstate access service. As WorldCom notes, CLECs should not be “deprived of revenue streams available to the incumbent monopolists with which they compete.” Rather, by moving CLEC access tariffs to the competing ILEC rate, we intend to permit CLECs to receive revenues equivalent to those the ILECs receive *from IXC*s, whether they are expressed as per-minute or flat-rate charges. ***For example, CLECs shall be permitted to set their tariffed rates so that they receive revenues equivalent to those that the ILECs receive through the presubscribed interexchange carrier charge (PICC), to the extent that it survives in the wake of our CALLS Order.***⁷⁶

In other words, if a CLEC could incorporate an ILEC’s PICC into the applicable benchmark for setting its own tariffed rates, then the reverse scenario is equally true; i.e., any CLEC-assessed PICC must be assessed within the CLEC’s aggregate, tariffed switched access charges subject to the benchmark rate. As outlined below, other Commission orders and rules further establish that the PICC is an access charge rate element that must be viewed as part of the aggregate charge imposed by Birch for switched access services subject to the CLEC Benchmark Rule. Many

⁷⁵ See Section I.C, *infra*.

⁷⁶ Seventh Report and Order at ¶ 54.

courts and state public utility commissions also recognize that the PICC is a switched access charge, and, therefore, must be captured within the limiting benchmark rate cap.

Moreover, by imposing aggregate access charges that violate the CLEC Benchmark Rule, Birch's Tariff is void *ab initio* and thus invalid from the date of issuance. With the Tariff void at the outset, Birch was not authorized to assess *any* access charges on Petitioners because it did not have a valid tariff on file and had not negotiated any commercial agreements. Thus, Birch's billed access charges have been invalid *in toto* since the Tariff's issuance in 2008. Birch may therefore be assessed retroactive refund damages for wrongfully collecting access charges without a valid tariff or negotiated agreement in effect.

Therefore, this Complaint seeks an order finding: (1) that Birch unjustly and unreasonably billed Petitioners for aggregate switched access charges—including the PICC—at a rate that exceeds the applicable benchmark rate in violation of the Commission's rules and orders; (2) that Birch must revise its tariff to provide for aggregate switched access rates—including any PICC—that do not exceed the benchmark rate;⁷⁷ (3) that Petitioners are not required to pay Birch the PICC, including any amount already assessed and disputed, because it causes Birch's aggregate access charges to exceed the benchmark rate; and (4) that Birch's Tariff is deemed void *ab initio* and invalid from the date of issuance, and, as a result, Birch was unauthorized to assess Petitioners any switched access charges.⁷⁸ Petitioners also seek overpayment damages and interest associated with those damages.⁷⁹

⁷⁷ The simple way to complete this task is to remove the PICC because Birch admits that its usage-based access charges already equal the benchmark. *See* Exhibit A at ¶ 15; Exhibit N at ¶ 7.

⁷⁸ As outlined above, Petitioners bring two separate counts under Section 201(b). Count I seeks damages for the amount that Birch assessed for switched access services in excess of the benchmark rate cap, which, given the parties' stipulation, constitutes the billed PICC

As fully explained below, the PICC—or any functionally equivalent charges for switched access services—must be assessed and captured within the CLEC benchmark rate limit along with Birch’s other access charges. If the PICC is properly treated as an access charge rate element, Birch’s aggregate charges unlawfully exceed the benchmark rate in violation of 47 C.F.R. § 61.26 and the Commission’s Orders. As a result, Birch’s switched access billings are unjust and unreasonable in violation of Section 201(b) of the Act. Any other result would allow CLECs to avoid the CLEC Benchmark Rule simply by imposing flat rated access related charges, inserting them into a separate section of their tariff, and calling them a miscellaneous charge. The Commission’s rules should not be so easily frustrated.

I. COUNT I: BIRCH’S CHARGES FOR SWITCHED ACCESS SERVICES VIOLATE THE COMMISSION’S CLEC BENCHMARK RULE BECAUSE BIRCH’S AGGREGATE ACCESS CHARGES—WHICH INCLUDES THE SEPARATELY-ASSESSED PICC—EXCEED THE BENCHMARK RATE.

Birch charges the PICC in addition to other traditional usage-based rate elements, which, by themselves, equate to the competing ILEC’s aggregate switched access charges for the same services.⁸⁰ Indeed, the parties have stipulated that Birch’s usage-based rates equal the benchmark rate.⁸¹ In other words, Birch bills benchmark rates through the charges contained in Section 5.4.3 of the Tariff, *plus* the PICC. Because the PICC is an access charge, Birch’s

charges. Compl. at ¶¶ 29, 33. Count II requests an order finding that the Tariff is void *ab initio*, that Birch was unauthorized to assess Petitioners for any switched access charges, and that Petitioners are entitled to retroactive damages for all switched access charges paid during the relevant timeframes. *Id.* at 36, 47–48. The relevant timeframes differ by Petitioner because they raised their complaints at different times. *See id.* at ¶¶ 29, 32.

⁷⁹ *Id.* at ¶¶ 53, 55.

⁸⁰ *Id.* at ¶¶ 11–14, 22.

⁸¹ *Id.* at ¶ 21, 29.

aggregate access charges violate the CLEC Benchmark Rule introduced in the Seventh Report and Order and codified in 47 C.F.R. § 61.26. This practice violates Section 201(b) of the Act.

A. The Seventh Report and Order Created the CLEC Benchmark Rule, Which Prohibits Birch From Assessing Aggregate Switched Access Charges at a Rate That Exceeds the Benchmark Rate Charged By the Competing ILEC.

Following Congress's amendments to the Communications Act in 1996, CLECs providing switched access services grew in number and were "largely unregulated in the manner that they set their access rates."⁸² The Commission quickly recognized that excessive CLEC access charges were destabilizing the market by shifting CLECs' costs disproportionately to IXC's and the market in general:

Our review of the record reveals that CLEC access rates vary quite dramatically and, on the average, are well above the rates that ILECs charge for similar service. Sprint, WorldCom and AT&T have submitted information on the CLEC access charges for which they have been billed. These data sets reveal a strikingly broad range of rates. Some competitive LECs charge at or even below 1 cent per minute; indeed, it appears that many CLECs are charging approximately the ILEC access rate. On the other hand, certain CLECs are charging above 9 cents per minute and the weighted average of CLEC access rates falls above 4 cents per minute. AT&T estimates that approximately 100 CLECs have tariffed rates above 2.5 cents per minute and 60 have per-minute rates above 5.0 cents. . . . [T]here can be little question that CLECs are adding dramatically to the overall level of access charges that IXC's are paying. We are concerned that the higher CLEC rates may shift an inappropriate share of the carriers' costs onto the IXC's and, through them, the long distance market in general.⁸³

As a result, the Commission sought to create a "bright-line rule" limiting the amounts that CLECs can charge for switched access services:

Previously, the Commission refrained from involving itself in a general examination of the reasonableness of CLEC access rates, ruling instead that any unreasonable rates could be addressed through the section 208 complaint process.

⁸² See Seventh Report and Order at ¶ 21 (noting that "the number of competitive LECs increased from 94 to 349" between 1996 and 1999).

⁸³ *Id.* at ¶ 22.

However, this regime has often failed to keep CLEC access rates within a zone of reasonableness. It now appears that the best means of proceeding is to restructure and partially deregulate the environment in which CLECs provide access service, providing a bright-line rule that will facilitate effective enforcement.”⁸⁴

The Commission defined the bright-line rule for CLEC access charges as a “benchmark” tied to the aggregate rate charged by the competing ILEC for similar services.⁸⁵ Commission rule 47 C.F.R. § 61.26 now expressly provides that “[t]he benchmark rate for a CLEC’s switched exchange access services will be the rate charged for similar services by the competing ILEC.”

The Commission did not require CLECs to implement particular rate structures or apply specific rate elements, instead allowing CLECs to set access charges as they wished so long as their “composite rates” for aggregate switched access charges did not exceed the competing ILEC benchmark:

A number of CLEC commenters urge the Commission not to set the benchmark at “the ILEC rate” because they claim that CLECs structure their service offerings differently than ILECs. We seek to preserve the flexibility which CLECs currently enjoy in setting their access rates. Thus, in contrast to our regulation of incumbent LECs, our benchmark rate for CLEC switched access does not require any particular rate elements or rate structure; for example, it does not dictate whether a CLEC must use flat-rate charges or per-minute charges, so long as the composite rate does not exceed the benchmark. Rather it is based on a per-minute cap for all interstate switched access service charges. In this regard, there are certain basic services that make up interstate switched access service offered by most carriers. Switched access service typically entails: (1) a connection between the caller and the local switch, (2) a connection between the LEC switch and the serving wire center (often referred to as “interoffice transport”), and (3) an entrance facility which connects the serving wire center and the long distance company’s point of presence. Using traditional ILEC nomenclature, it appears that most CLECs seek compensation for the same basic elements, however precisely named: (1) common line charges; (2) local switching; and (3) transport.

⁸⁴ *Id.* at ¶ 25.

⁸⁵ *See id.* at ¶¶ 51–54; *PAETEC Commc'ns, Inc. v. MCI Commc'ns Servs., Inc.*, 712 F. Supp. 2d 405, 409 (E.D. Pa. 2010) (“The ‘CLEC Benchmark’ is the maximum permissible tariffed rate that can be charged under FCC rules for CLEC interstate switched access service.”) (citation omitted).

The only requirement is that the aggregate charge for these services, however described in their tariffs, cannot exceed our benchmark. In addition, by permitting CLECs to decide whether to tariff within the safe harbor or to negotiate terms for their services, we allow CLECs additional flexibility in setting their rates and the amount that they receive for their access services.⁸⁶

The Commission specifically found that the PICC was one access charge rate element that must fall within the CLEC Benchmark Rule:

By moving CLEC tariffs to the “rate of the competing ILEC” we do not intend to restrict CLECs to tariffing solely the per-minute rate that a particular ILEC charges for its switched, interstate access service. As WorldCom notes, CLECs should not be “deprived of revenue streams available to the incumbent monopolists with which they compete.” Rather, by moving CLEC access tariffs to the competing ILEC rate, we intend to permit CLECs to receive revenues equivalent to those the ILECs receive *from IXCs*, whether they are expressed as per-minute or flat-rate charges. ***For example, CLECs shall be permitted to set their tariffed rates so that they receive revenues equivalent to those that the ILECs receive through the presubscribed interexchange carrier charge (PICC), to the extent that it survives in the wake of our CALLS Order.*** This does not entitle CLECs to build into their tariffed per-minute access rates a component representing the subscriber line charge (SLC) that ILECs impose on their end users, or any other charges that ILECs recover from parties other than the IXCs to which they provide access service.⁸⁷

In sum, the Seventh Report and Order established that CLECs cannot assess switched access charges that, in the aggregate, exceed the switched access charges assessed by the competing ILEC serving the same territory.

B. The CLEC Benchmark Rule Applies to *All* Charges for Switched Access Services, and Any Such Charges Must be Included in Birch’s Tariff for Switched Access Services Capped at the Benchmark Rate.

In the Seventh Report and Order, the Commission expressly confirmed that the CLEC Benchmark Rule applies the ILEC benchmark rate cap to “*all* interstate switched access service

⁸⁶ Seventh Report and Order at ¶ 55.

⁸⁷ *Id.* at ¶ 54.

charges” assessed by a CLEC.⁸⁸ Because “CLECs structure their service offerings differently than ILECs,” the Commission “preserve[d] the flexibility which CLECs currently enjoy in setting their access rates” and provided a non-exclusive list of access charge rate elements that could be assessed for switched access services subject to the benchmark.⁸⁹

In this regard, there are certain basic services that make up interstate switched access service offered by most carriers. Switched access service *typically* entails: (1) a connection between the caller and the local switch, (2) a connection between the LEC switch and the serving wire center (often referred to as “interoffice transport”), and (3) an entrance facility which connects the serving wire center and the long distance company’s point of presence. Using traditional ILEC nomenclature, it appears that most CLECs seek compensation for the same basic elements, *however precisely named*: (1) common line charges; (2) local switching; and (3) transport. The only requirement is that the aggregate charge for these services, *however described in their tariffs*, cannot exceed our benchmark.⁹⁰

The Commission further elaborated in a footnote:

Thus, the safe harbor [benchmark] rate applies, *but is not necessarily limited*, to the following specific rate elements *and their equivalents*: carrier common line (originating); carrier common line (terminating); local end office switching; interconnection charge; information surcharge; tandem switched transport termination (fixed); tandem switched transport facility (per mile); tandem switching.⁹¹

The Commission thus made clear that no matter how any particular access charge is named in a CLEC tariff, any such charge must be captured within the benchmark rate if it is billed for

⁸⁸ *See id.* (emphasis added); *see also, e.g., N. Valley Commc'ns, L.L.C. v. AT&T Corp.*, No. 1:14-CV-01018-RAL, 2015 WL 11675666, at *5 (D.S.D. Aug. 20, 2015) (“Thus, if [a CLEC’s] services *are not access services*, then they not only fall outside the tariff . . . , but also fall outside the scope of the FCC [benchmark] rule limiting the methods by which a CLEC may charge.”) (citing Seventh and Eighth Reports and Orders) (emphasis added).

⁸⁹ Seventh Report and Order at ¶ 55.

⁹⁰ *Id.* (emphasis added).

⁹¹ *Id.* at fn. 26 (emphasis added); *see also* 47 C.F.R. § 61.26(a)(3) (rule encompasses the same language).

switched access service, especially if it is functionally equivalent to the listed rate elements.

The Commission regulation codifying the CLEC Benchmark Rule in 47 C.F.R. § 61.26 also affirms that the ILEC benchmark rate caps *all* charges billed by CLECs for switched access services, regardless of how they are described in the tariff. Like the Seventh Report and Order, the regulation provides a non-exclusive list of rate elements that could be charged for switched access services:

Switched exchange access services shall include . . . *[t]he functional equivalent of the ILEC interstate exchange access services typically associated with the following rate elements: Carrier common line (originating); carrier common line (terminating); local end office switching; interconnection charge; information surcharge; tandem switched transport termination (fixed); tandem switched transport facility (per mile); tandem switching.*⁹²

In the Eighth Report and Order, the Commission again clarified that the rate element lists provided in the regulation and Seventh Report and Order were by no means intended to be all-encompassing, and that other rate elements not listed could fit within the access services definition:

When read in conjunction with the definition contained in section 61.26(a)(3), we think the two lists of elements described in paragraph 55 were intended to illustrate what *might be considered* the “functional equivalent” of incumbent LEC access services, *rather than mandating the provision of a particular set of services.*⁹³

Therefore, as long as a charge is one for switched access service, it falls within the aggregate charges subject to the CLEC Benchmark Rule and are capped at the competing ILEC benchmark rate.

⁹² 47 C.F.R. § 61.26(a)(3)(i) (emphasis added).

⁹³ *In the Matter of Access Charge Reform*, 19 F.C.C. Rcd. 9108, fn. 48 (2004) (hereinafter “Eighth Report and Order”).

C. The PICC is a Switched Access Charge Rate Element That Must Be Assessed Within the Benchmark Rate Cap and Included in Birch’s Tariff for Switched Access Services.

The Commission specifically created and authorized PICC charges as switched access charge rate elements.⁹⁴ Although PICC charges were largely phased out by the CALLS Order,⁹⁵ the Commission and the federal courts consistently identify and define them as switched access charges.⁹⁶ PICC charges are indeed imposed for switched access services to complete long-

⁹⁴ See, e.g., *In the Matter of Access Charge Reform Price Cap Performance Review for Local Exch. Carriers Transp. Rate Structure & Pricing End User Common Line Charges*, 12 F.C.C. Rcd. 15982 at ¶¶ 36, 38 (1997) (footnote omitted) (noting the Order’s goal to “reshape the existing rate structure in order to eliminate significant implicit subsidies in the access charge system,” and concluding that “LECs should recover [common line] revenues through a flat, per-line charge assessed on the IXC to whom the access line is presubscribed—the . . . PICC”); *In Re AT&T Commc’ns of Wisconsin, Inc.*, 6720-TI-156, 2001 WL 1744264 (Nov. 16, 2001) (stating that in 1997 the Commission “revised the interstate access charge rate structure and created a switched access rate element, the Presubscribed Interexchange Carrier Charge (‘PICC’).”); *In the Matter of Access Charge Reform Second Order*, 12 F.C.C. Rcd. 16606 (1997) (providing that the PICC “is part of [the Commission’s access charge] transition [to a more cost-causative rate structure]”); 47 C.F.R. § 69.153 (authorizing ILECs to charge PICC charges under Part 69 of the Commission’s regulations, entitled “Access Charges”).

⁹⁵ See Section I.D, *infra*.

⁹⁶ See, e.g., *In the Matter of Commc’ns Options, Inc.*, 22 F.C.C. Rcd. 13680, 13682 (2007) (“PICC . . . charges are ‘access’ charges that allow certain local exchange carriers to recover the telecommunications service provider costs of enabling end users to make and receive interexchange calls.”) (footnote omitted); *In the Matter of Fed.-State Joint Bd. on Universal Serv.*, 14 F.C.C. Rcd. 8078, 8098–99 (1999) (listing PICC charges as “interstate access charges” along with carrier common line charges and subscriber line charges); *In the Matter of Access Charge Reform Price Cap Performance Review for Local Exch. Carriers . . .*, 14 F.C.C. Rcd. 14221, 14320 (1999) (describing the PICC as “an interstate access rate element”); *In the Matter of Nat’l Exch. Carrier Ass’n Petition to Amend Section 69.104 of the Commission’s Rules*, 19 F.C.C. Rcd. 13591, 13608 (2004) (describing the PICC and carrier common line charge as “access charges”); *AT&T Corp.*, 16 F.C.C. Rcd. 12312, 12342 (2001) (indicating that the PICC is an “access rate element” that should be included in calculating a carrier’s access rates along with other traditional rate elements, including the carrier common line, local switching, and access tandem charges); *Comment Sought on Intercarrier Comp. Reform Compliance & Monitoring Form*, 28 F.C.C. Rcd. 49 (2013) (listing the PICC as a “common line [switched access] rate element”); *Competitive Telecommunications Ass’n v. F.C.C.*, 309 F.3d 8, 15 (D.C. Cir. 2002) (noting that the CALLS Order identified “a number of elements in access charges,”

distance calls.⁹⁷ State courts and public utility commissions also agree that PICC charges constitute switched access charges.⁹⁸ Because PICC charges were developed and recognized as access charges, the PICC billed by Birch must be assessed within its Tariff for switched access services capped by the benchmark rate.⁹⁹

including the PICC and the carrier common line charge); *Texas Office of Pub. Util. Counsel v. F.C.C.*, 265 F.3d 313, 324 (5th Cir. 2001) (finding that “end-users will be assessed access charges” through PICC charges passed down to IXCs’ customers).

⁹⁷ See, e.g., *In the Matter of Access Charge Reform Price Cap Performance Review for Local Exch. Carriers*, 15 F.C.C. Rcd. 12962, 13001 (2000) (stating that the PICC was “established to recover loop costs for . . . interexchange access”); *Indoor Billboard/Washington, Inc. v. Integra Telecom of Washington, Inc.*, 170 P.3d 10, 19 (Wash. 2007) (“The purpose of the FCC regulated PICC is to allow ILECs to recover from their customers the costs of providing interexchange carriers access to the local loop.”); *In the Matter of Commc’ns Options, Inc.*, 22 F.C.C. Rcd. 13680, fn. 14 (2007) (“Access charges recover the [LEC’s] non-traffic sensitive costs, which consist primarily of the costs of poles, wires, conduit, and other local exchange facilities used to prove the telephone ‘loop’ to local customers . . .”).

⁹⁸ See, e.g., *In the Matter of the Application & Complaint of AT&T Commc’ns of Michigan, Inc., Against Ameritech Michigan Seeking Resolution of A Dispute Concerning Toll Access Rates.*, U-11660, 1998 WL 35486747, at *2 (Oct. 26, 1998) (“The PICC is a relatively new per-line access charge.”); *Wisconsin Bell, Inc. v. Pub. Serv. Comm’n of Wisconsin*, 675 N.W.2d 242, 250 (Wis. Ct. App. 2004) (noting that “the PICC is a rate element assessed against carriers for access services,” and finding that a CLEC, “through its implementation of the PICC, effectively altered its rate—its access charges—in an unlawful manner”); *In The Matter Of The Petitions Of U.S. SPRINT COMMUNICATIONS COMPANY, LP*, 2016 WL 8234041, at *5 (describing the PICC as an “access charge”); *In the Matter of A Gen. Investigation into Issues Relating to Local Competition in the State of Kansas*, 99-GIMT-784-GIT, 1999 WL 35640792 (Nov. 30, 1999) (noting that certain carriers’ interstate access rates were lower than their intrastate rates “even after adjusting for the creation of a PICC rate element in the interstate access rate structure”); *Re: Universal Serv. Generic Contested Case*, 97-00888, 1997 WL 35103437 (Aug. 12, 1997) (concluding that “the revenue generated from interstate access services” included PICC charges and carrier common line charges, and that such revenues “should be included in the [state] revenue benchmark”).

⁹⁹ See Seventh Report and Order at ¶ 54 (providing that the CLEC Benchmark Rule applies the ILEC benchmark rate cap to “all interstate switched access service charges” assessed by a CLEC) (emphasis added); see also *In the Matter of Petition of Qwest Corp. for Forbearance Pursuant to 47 U.S.C. S 160(c) in the Phoenix, Arizona Metro. Statistical Area*, 25 F.C.C. Rcd. 8622, 8682 (2010) (applying the CLEC Benchmark Rule to a PICC and noting that because the carrier “does not currently charge a PICC or a CCLC in in Arizona, . . . it cannot benchmark to existing rates”) (citing Seventh Report and Order).

Even if PICC charges were not widely regarded as access charges, they are at least functionally equivalent to Carrier Common Line Charges (“CCLC”), which are expressly named as rate elements subject to the CLEC Benchmark Rule in the non-exclusive lists provided in the Seventh Report and Order and the codifying regulation.¹⁰⁰ Many Commission orders and court decisions establish that PICC charges are functionally equivalent—if not nearly identical—to CCLC charges, which were also designed to recover common line costs from IXCs.¹⁰¹ In fact, the PICC was specifically created to replace the CCLC to help ensure that access charges more accurately reflected the actual costs incurred.¹⁰² Therefore, the PICC—like its CCLC sister rate

¹⁰⁰ Seventh Report and Order at ¶ 55 (listing “common line charges”) and fn. 26 (listing “carrier common line” rate element and specifying that the safe harbor benchmark rate applies, “*but is not necessary limited to,*” the listed rate elements “*and their equivalents*”) (emphasis added); 47 C.F.R. § 61.26(a)(3)(i) (listing “carrier common line” rate element and specifying that “switched exchange access services” include “*the functional equivalent of the . . . access services typically associated with*” the listed rate elements).

¹⁰¹ See, e.g., *In the Matter of Access Charge Reform Price Cap Performance Review for Local Exch. Carriers* . . . , 14 F.C.C. Rcd. 14221 (1999) (noting that PICC charges and CCLC charges both recover interstate common line costs from IXCs); *In the Matter of Sw. Bell Tel. Co.*, 13 F.C.C. Rcd. 2437, fn. 3 (1998) (“[Carrier common line] rate elements include both the flat-rated [PICC] and the per-minute CCLC.”); *In the Matter of Access Charge Reform*, 19 F.C.C. Rcd. 9108, 9167 (2004) (explaining that, beginning in 1997, the Commission required ILECs “to recover a portion of [common line costs historically recovered through the CCLC] through a . . . [PICC].”); *In Re Access Charge Reform Price Cap Performance Review for LECs*, 18 F.C.C. Rcd. 14976, 14979–80 (2003) (noting that “[a]ny costs above the PICC cap could be recovered through the CCLC”); *In the Matter of Nat’l Exch. Carrier Ass’n Petition to Amend Section 69.104 of the Commission’s Rules*, 19 F.C.C. Rcd. 13591, 13608 (2004) (referencing “other access charges (i.e., the PICC and the CCLC)”; *In the Matter of Fed.-State Joint Bd. on Universal Serv.*, 13 F.C.C. Rcd. 24744, 24792 (1998) (addressing “recent proposals to make some portion ([CCLC] and PICC) of access charges explicit”); *Wisconsin Bell, Inc. v. Pub. Serv. Comm’n of Wisconsin*, 675 N.W.2d 242, 250 (Wis. Ct. App. 2004) (“The Commission concluded that both the PICC and CCLC were designed to recover common line costs and simply did so in different ways—CCLC on a minutes-of-use basis; PICC on a per-line flat charge basis.”).

¹⁰² See, e.g., *Texas Office of Pub. Util. Counsel v. F.C.C.*, 265 F.3d 313, 318–19 (5th Cir. 2001) (noting that the Commission “replaced the [CCLC] with the flat-rate [PICC]” to help ensure that “access charges more accurately reflected the actual costs incurred”) (citing to various Commission orders); *In Re Multi-Ass’n Grp. (Mag) Plan*, 16 F.C.C. Rcd. 19613, 19645 (2001)

element—is a switched access charge that is subject to the benchmark rate.

Affirming the purpose and history underlying PICC charges as access charges, the Seventh Report and Order confirmed that PICC charges are subject to the CLEC Benchmark Rule for CLEC switched access services. In fact, immediately after introducing the CLEC Benchmark Rule, the Seventh Report and Order directly addressed PICC charges:

By moving CLEC tariffs to the “rate of the competing ILEC” we do not intend to restrict CLECs to tariffing solely the per-minute rate that a particular ILEC charges for its switched, interstate access service. As WorldCom notes, CLECs should not be “deprived of revenue streams available to the incumbent monopolists with which they compete.” Rather, by moving CLEC access tariffs to the competing ILEC rate, we intend to permit CLECs to receive revenues equivalent to those the ILECs receive *from IXCs*, whether they are expressed as per-minute or flat-rate charges. ***For example, CLECs shall be permitted to set their tariffed rates so that they receive revenues equivalent to those that the ILECs receive through the presubscribed interexchange carrier charge (PICC), to the extent that it survives in the wake of our CALLS Order.***¹⁰³

Broadly speaking, if the Commission had never intended CLEC-assessed PICC charges—or functionally equivalent access charges—to be subject to the CLEC Benchmark Rule’s cap for switched access services, it would not have precisely identified the charge in this context, i.e., within an Order limiting its application to access services,¹⁰⁴ and integrally linked to

(“In 1997, the Commission established the PICC as a substitute for the [CCLC] in the common line rate structure of price cap carriers.”) (footnote omitted); *In the Matter of Ameritech* . . . , 12 F.C.C. Rcd. 18249 (1997) (“The *Access Reform First Report and Order* adjusted the regulatory system for recovery of common line costs, establishing a flat-rated [PICC] that replaced in large part the recovery of such costs through the CCLC.”); *In Re Verizon Florida Inc.*, 030867-TL, 2003 WL 23112411 (Dec. 24, 2003) (“[W]e are persuaded that the PICC can be included in the calculation of the interstate [access] rate target, since it was developed to recover nontraffic [sic] sensitive charges that were originally in the traffic sensitive [CCLC].”).

¹⁰³ Seventh Report and Order at ¶ 54 (emphasis added).

¹⁰⁴ See, e.g., *id.* at ¶ 1 (“With this order, we continue our efforts to establish a ‘pro-competitive, deregulatory national policy framework’ for the United States’ telecommunications industry by addressing a number of interrelated issues concerning [CLEC] charges for interstate switched access services.”).

the Commission’s explanation about restrictions on CLEC switched access charges under the CLEC Benchmark Rule. More narrowly, this paragraph’s direct mandate confirms that CLEC-assessed PICC charges—or functionally equivalent access charges—cannot be billed separately and must be included within tariffed access charges capped by the benchmark. First, the Order proclaims that the CLEC Benchmark Rule allows CLECs to “receive revenues equivalent to those the ILECs receive *from IXCs*, whether they are expressed as per-minute or flat-rate charges.”¹⁰⁵ In doing so, the Commission established that CLECs can set their *tariffed benchmarked rates for switched access services* no higher than the competing ILECs’ total access charges, regardless of whether the ILECs’ charges are tariffed at per-minute rates or flat-rates (or both). In other words, in setting the CLEC benchmark rate, what matters is the *total* switched access charge revenues that competing “ILECs receive *from IXCs*,” not the manner in which they are tariffed.

Next, to illustrate this principle, the Commission specified that CLECs are “permitted to set their *tariffed [benchmark] rates*”—not assess separate charges—“so that they receive revenues equivalent to those that the ILECs receive through the [PICC], to the extent that it survives in the wake of our CALLS Order.”¹⁰⁶ Before the CALLS Order, most ILECs received significant access charge revenues through flat-rate PICC charges,¹⁰⁷ so it was only natural to use the PICC as an example of an ILEC flat-rate access charge that should be assessed in calculating

¹⁰⁵ See *id.* at ¶ 54 (emphasis in original).

¹⁰⁶ See *id.*

¹⁰⁷ See, e.g., *In the Matter of Ameritech . . .*, 12 F.C.C. Rcd. 18249 (1997) (“The *Access Reform First Report and Order* adjusted the regulatory system for recovery of common line costs, establishing a flat-rated [PICC] that replaced in large part the recovery of such costs through the CCLC.”).

the applicable CLEC benchmark. Because most ILECs no longer assess PICC charges, this example has lost some relevance but nonetheless generates a simple and straightforward conclusion in line with the Commission's intent and history underlying PICC charges: if a CLEC could incorporate an ILEC's PICC in calculating the applicable benchmark for setting its own tariffed rates, then the reverse scenario must also be true; i.e., any CLEC-assessed PICC or functionally equivalent access charge must be assessed within the CLEC's aggregate, tariffed switched access charges subject to the benchmark rate. The Commission recently affirmed this conclusion when it expressly linked PICC charges and CCLC charges to the CLEC Benchmark Rule.¹⁰⁸

For the reasons stated above, the PICC undoubtedly qualifies as an access charge rate element that is billed for switched access service subject to the CLEC Benchmark Rule. At the very least, it is equivalent to the CCLC charge that is expressly named in the non-exclusive lists of rate elements that must be assessed within the benchmark rate.¹⁰⁹ The Seventh Report and Order not only created the CLEC Benchmark Rule to cap *all* CLEC access charges, but also separately and specifically confirmed that PICC charges must be assessed within CLECs' tariffs for switched access charges limited by the benchmark rate. Therefore, the PICC billed by Birch

¹⁰⁸ See *Connect America Fund Developing a Unified Intercarrier Compensation Regime*, 30 FCC Rcd. 1587, ¶ 8, n. 27 (2015) ("Except in the limited circumstances where a PICC or CCL is being charged, there is no danger that competitive LECs would be recovering these costs through benchmarked access charges.").

¹⁰⁹ See 47 C.F.R. § 61.26(a)(3)(i) ("Switched exchange access services shall include . . . The functional equivalent of the ILEC interstate exchange access services typically associated with the following rate elements: *Carrier common line (originating)*; *carrier common line (terminating)*; local end office switching; interconnection charge; information surcharge; tandem switched transport termination (fixed); tandem switched transport facility (per mile); tandem switching;") (emphasis added).

must be included in Birch's Tariff for aggregate switched access services capped at the benchmark.

D. The Eighth Report and Order Further Confirmed That CLECs Cannot Assess a PICC That, When Combined With All Other Switched Access Charges Subject to the CLEC Benchmark Rule, Exceeds the ILEC Benchmark Rates.

The FCC emphasized some critical aspects of the CLEC Benchmark Rule when it issued its Eighth Report and Order in 2004. That Order clarified that “any PICC imposed by a [CLEC] *qualifying for the rural exemption* may be assessed in addition to the rural benchmark rate if and only to the extent that the competing [ILEC] charges a PICC.”¹¹⁰ The Eighth Report and Order did not address PICC charges with respect to non-rural CLECs like Birch,¹¹¹ whose access charges—including any PICC or functionally equivalent charges—continue to be governed by the CLEC Benchmark Rule established in the Seventh Report and Order and the Commission's codifying regulation. The fact that the Commission expressly created this exemption for rural CLECs further establishes that non-rural CLECs cannot assess PICC charges above the benchmark rate, and that any such switched access charges must be included in the CLECs' tariffs for switched access services subject to the benchmark cap. The Commission did not even permit rural CLECs to impose PICC charges outside and in addition to the access rates imposed by the competing ILEC; if this is true for rural CLECs, it is all the more true for non-rural CLECs such as Birch.

A closer reading of how and why the “rural benchmark rate” used in connection with rural CLECs was conceived and defined differently than the standard price-cap ILEC benchmark

¹¹⁰ Eighth Report and Order at ¶ 76 (emphasis added).

¹¹¹ See Compl. at ¶ 3.

rate that governs switched access charges for non-rural CLECs like Birch is also telling.¹¹² The Commission expressly adopted the rural benchmark rate as an “*exemption* to [the Seventh Report and Order’s] benchmark scheme, recognizing that a higher level of access charges is justified for certain CLECs serving truly rural areas.”¹¹³ This exemption created a “separate benchmark” altogether for rural CLECs—“a small number of carriers serving a tiny portion of the nation’s access lines”—when they compete with non-rural price cap ILECs.¹¹⁴ Specifically, the Commission found that, in this context, applying the traditional CLEC Benchmark Rule (i.e., the standard at issue in this case, prohibiting non-rural CLECs such as Birch from imposing aggregate switched access charges that exceed the competing ILEC’s switched access benchmark rates) “could prove rather harsh for some of the small number of CLECs that operate in rural areas”—especially “for those CLECs that operate in a rural area served by a price-cap [ILEC] with state-wide operations.”¹¹⁵ To address this concern, the Commission permitted rural CLECs to assess the highest National Exchange Carrier Association (“NECA”) rate band rates charged by a small number of rural ILECs because “they experience much higher costs, particularly loop costs.”¹¹⁶ But, in doing so, the Commission had to further consider the fact that those NECA rates would include a CCL charge whereas the CALLS Order reform had eliminated CCL charges for the price cap ILEC that the non-rural CLEC would be competing

¹¹² See Compl. at ¶ 3 (Birch admits that it is not a rural CLEC).

¹¹³ See Seventh Report and Order at ¶ 3 (emphasis added).

¹¹⁴ *Id.* at ¶¶ 45, 68.

¹¹⁵ *Id.* at ¶ 64.

¹¹⁶ *Id.* at ¶ 66.

against.¹¹⁷ To address this, the Commission held that the benchmark rate for rural CLECs is the highest NECA rate band rates *minus* the NECA tariff CCL charge.¹¹⁸

And, the Commission also had to consider the fact that its post-CALLS Order reform of rate-of-return ILEC rates (under NECA or otherwise) had never permitted a PICC. As the Eight Report and Order aptly summarized:

Historically, incumbent LECs have recovered the interstate portion of common line costs through two separate charges - the subscriber line charge (SLC), a flat-rated charge imposed on end-users, and the carrier common line charge (CCLC), a per-minute charge imposed on IXCs. In the 1997 *Access Charge First Report and Order*, the Commission required price cap LECs to recover a portion of these costs through a new presubscribed interexchange carrier charge (PICC), a flat-rated charge assessed on an end-user's presubscribed IXC. . . . In 2000, the Commission adopted the *CALLS Order*, an integrated access charge and universal service reform plan for price cap carriers, one feature of which was to raise SLC caps over time so as to phase out the PICC and CCLC and require price cap LECs to recover the majority of interstate common line costs from their end-users. . . . *In 2001, the Commission adopted an access charge and universal service reform plan for rate-of-return carriers.... As part of these reforms, the Commission raised SLC caps to the levels set for price cap carriers, eliminated CCL charges as of July 1, 2003, and replaced any resulting common line revenue shortfall with explicit universal service support.* . . .¹¹⁹

Thus, by using NECA rates as the benchmark, rural CLECs would be precluded from recovering a PICC even where the competing price cap LEC may still be charging a PICC.¹²⁰ To address this, the Commission permitted the rural CLEC to charge a PICC above and beyond the rural exemption NECA rate.¹²¹ Importantly, the Eighth Report and Order clarified that “any PICC

¹¹⁷ *Id.* at ¶ 81.

¹¹⁸ *Id.*

¹¹⁹ Eighth Report and Order at fn. 132 (citations omitted, emphasis added).

¹²⁰ *Id.*

¹²¹ *Id.*

imposed by a [CLEC] *qualifying for the rural exemption* may be assessed in addition to the rural benchmark rate if and only to the extent that the competing [ILEC] charges a PICC.”¹²²

As the above discussion makes clear, the rural exemption PICC language further confirms Petitioners’ position in this case—that the correct reading of the standard CLEC Benchmark Rule is that any CLEC switched access charges, including a PICC, must be included in the switched access services subject to the benchmark cap. The only reason the Commission rules have to specifically call out a PICC in the rural exemption is because the benchmark rates chosen for that context did not include a PICC. Moreover, even under the rural exemption benchmark, the ability for rural CLECs to charge a PICC is specifically contingent on what the competing price cap ILEC is charging and recovering: If the ILEC does not charge a PICC, neither can the rural CLEC. If the competing price cap ILEC is charging a PICC, once again the CLEC is capped by the amount that the price cap ILEC charges. In this way, the rural exemption benchmark still roughly mirrors the non-rural or standard CLEC benchmark in that it governs the ability of a CLEC’s PICC charges—as well as any other switched access charge the CLEC may seek to impose. In other words, at the end of the day, the Seventh Report and Order’s guidance with respect to inclusion of CLEC PICCs in the CLEC benchmark restrictions applies equally: “CLECs shall be permitted to set their tariffed rates so that they receive revenues equivalent to those that the ILECs receive through the presubscribed interexchange carrier charge (PICC), *to the extent that it survives in the wake of our CALLS Order.*”¹²³

While Birch is not a rural CLEC, the Eighth Report and Order reinforces three key issues

¹²² Eighth Report and Order at ¶ 76.

¹²³ Seventh Report and Order at ¶ 54 (emphasis added).

in this case: that (1) the PICC is an element of switched access, (2) the amount that a CLEC can impose for switched access, including any PICC charges, is specifically governed by what the competing ILEC is charging; and (3) irrespective of whether the CLEC is rural or not-rural, the PICC *must* be factored into that analysis.

E. Commission Regulation 47 C.F.R. § 69.153 (“Presubscribed Interexchange Carrier Charge (PICC)”) Does Not Apply to CLECs Like Birch, Whose Access Charges are Governed Exclusively by the CLEC Benchmark Rule.

Birch mistakenly believes that 47 C.F.R. § 69.153 (“Presubscribed Interexchange Carrier Charge (PICC)”) allows it to charge the PICC separately from its switched access charges without regard for the Commission’s CLEC Benchmark Rule—which, as explained above, caps *all* CLEC aggregate switched access charges, including the PICC.¹²⁴ Contrary to Birch’s position, 47 C.F.R. § 69.153 pertains only to price cap *ILECs*, not CLECs.¹²⁵ The Commission made clear that this regulation does not concern CLECs, as it falls squarely under “Subpart C. Computation of Charges for Price Cap Local Exchange Carriers,” which applies “only to telephone companies subject to the price cap regulations set forth in Part 61 of this Chapter.”¹²⁶ The price cap regulations in Part 61 appear under a subpart containing rules for “dominant

¹²⁴ See Exhibit E at ¶ 16 (“The PICC specifically is authorized by the FCC at 47 C.F.R. § 69.153. . . . The PICC is capped by regulation at \$4.31 per-line per-month.”).

¹²⁵ See *Indoor Billboard/Washington, Inc. v. Integra Telecom of Washington, Inc.*, 170 P.3d 10, 13 (Wash. 2007) (“Under [FCC] regulations, . . . [ILECs] may impose a PICC on interexchange (long distance) carriers. . . . The purpose of the PICC is to allow ILECs to recover some of their costs or providing the ‘local loop.’” . . . [Defendant] is not an ILEC. [Defendant] is a competitive telecommunications company . . . and, therefore, not subject to the provisions of 47 C.F.R. § 69.153.”) (emphasis added); see also *In the Matter of A Gen. Investigation into Issues Relating to Local Competition in the State of Kansas*, 99-GIMT-784-GIT, 1999 WL 35640642 (Sept. 30, 1999) (“[T]he PICC access rate element is only applicable to price-cap regulated companies.”).

¹²⁶ 47 C.F.R. § 69.151.

carriers,” i.e., price cap ILECs, and have nothing to do with CLEC access charges—except to the extent that they govern the rates that price cap ILECs can charge; those price cap ILEC rates may, in turn, constitute the benchmark that CLEC aggregate rates (no matter how structured) cannot exceed.¹²⁷

Birch—a non-dominant CLEC—cannot exploit this ILEC regulation and ignore the CLEC Benchmark Rule that caps *all* CLEC aggregate access charges, including the PICC, which must be assessed within the benchmark rate and cannot be billed separately. As described above, the CALLS Order led to virtually all price cap ILECs dropping the PICC. In large part, this is due to the hierarchy created by the rules prescribing the manner in which a price cap ILEC may now recover the interstate portion of its common line costs (referred to as “Average Price Cap CMT Revenues per Line Month” in the price cap rules).¹²⁸ As discussed above, a key aspect of the CALLS Order reform was to modify the price cap rules so as to require price cap ILECs to, going forward, recover the majority of their interstate common line costs from their end-users via SLC charges. To accomplish this, 47 C.F.R. 69.153, in turn, specifies that a price cap ILEC may only assess a PICC where its “Average Price Cap CMT Revenues per Line Month” (i.e. its interstate common line costs) are not recovered via SLCs (referred to as “End User Common Line Charges” in the price cap rules) or Interstate Access Universal Service (IAS) Support Per

¹²⁷ *Id.* at § 61.31; *see also, e.g., In the Matter of at&t Corp., Complainant*, BUREAU IDEB-17-MD-001, 2017 WL 5237210, at *2 (OHMSV Nov. 8, 2017) (“The Commission’s tariff regime for switched access charges differs for dominant carriers and non-dominant carriers, ILECs and CLECs. ILECs, as dominant carriers, are required to file and maintain tariffs either as rate-of-return or price-cap carriers. . . . Competitive access providers were classified as non-dominant, and, as such, are not required to file cost support.”) (footnotes omitted).

¹²⁸ 47 C.F.R. § 61.3(d)(defining “Average Price Cap CMT Revenues per Line Month”).

Line.¹²⁹ As a result of these changes effected by the CALLS Order, precious few (if any) price cap ILECs assess PICCs anymore. This is because precious few have sufficient common line costs to qualify for PICCs under 47 C.F.R. § 69.153 anymore.¹³⁰ And, to the extent they do, those ILECs' PICC rates simply become baked into the ILEC benchmark that CLEC aggregate rates (no matter how structured) cannot exceed. On the other hand, the regulation never permitted CLECs like Birch to assess PICC charges outside the benchmark rate, especially if the competing ILECs do not impose any PICC charges. Again, none of the ILECs with whom Birch competes has a PICC in its interstate access tariffs.¹³¹

Again, none of this has anything to do with CLEC access charges—except to the extent that it describes how price cap ILEC access rates are formulated and regulated and to the extent those price cap ILEC rates may, in turn, constitute the benchmark that CLEC aggregate rates cannot exceed. CLECs are not subject to prescriptive rules around rate-making, under the price cap rule or otherwise. That is the whole *raison d'être* for the CLEC Benchmark Rule. For CLECs, the Commission expressly chose not to impose a regulatory regime that specified the precise types of CLEC access charges that can be imposed and the manner in which they are to

¹²⁹ 47 C.F.R. § 69.153(a); *see also* 47 C.F.R. 69.152 (defining “End User Common Line Charges” and prescribing when and how they can be imposed by price cap ILECs). While IAS has been transitioned to Connect America Funding, IAS is still backed-out pursuant to Rule 69.153(a). *See e.g. Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, 28 FCC Rcd 14887, 14892–93 (2013). And, this hierarchy is memorialized elsewhere in the Commission rules as well. *See e.g.* 47 C.F.R. § 61.46(d) (specifying how “maximum allowable carrier common line (CCL) revenue” is to be computed).

¹³⁰ Similarly, the elimination of carrier common line charges sought by the CALLS Order reform was effected by the fact that the Commission's price cap rules dictate that originating and terminating CCL charges are only recoverable to the extent a price cap ILEC's are, in turn, not recovered via SLCs, IAS, and PICCs combined. *See e.g.* 47 C.F.R. 69.154 (referencing the 47 C.F.R. 61.46(d) hierarchy).

¹³¹ Compl. at ¶ 20.

be calculated and limited, etc. Instead, the Commission chose to regulate CLEC access rates by requiring that those charges, however structured, simply not exceed the rate assessed by price cap ILECs (in the event, as is the case here, that the price cap LEC rates are the benchmark).

Moreover, if anything, 47 C.F.R. § 69.153, and the broader content and structure of Subpart C or Part 69, further confirm that the PICC is a switched access charge subject to the CLEC Benchmark Rule for CLECs. Part 69 (entitled “Access Charges”), broadly, “establishes rules for access charges for interstate or foreign access services provided by telephone companies on or after January 1, 1984.”¹³² The Commission intended for these “access charge rules”—including 47 C.F.R. § 69.153—to “translate . . . interstate costs into charges for the specific interstate access services and rate elements.”¹³³ The PICC access charge regulation in 47 C.F.R. § 69.153 also clarifies that PICC charges are fundamentally equivalent to (or at least typically associated with) both “carrier common line charges” and “interconnection charges,” which are referenced in the non-exclusive lists of access charges under the Seventh Report and Order and the codifying regulation for the CLEC Benchmark Rule.¹³⁴ Because PICC charges were specifically developed and permitted as switched access charge rate elements in the access

¹³² 47 C.F.R. § 69.1.

¹³³ See *In Re Access Charge Reform Price Cap Performance Review for LECs*, 18 F.C.C. Rcd. 14976, 15005 (2003) (citing 47 C.F.R. §§ 69.1-69.731).

¹³⁴ See 47 C.F.R. § 69.153 (“In the event the ceiling on the PICC prevent the PICC from recovering all the residual common line/marketing and residual interconnection charge revenues, the PICC shall recover all residual common line/marketing revenues before it recovers residual interconnection charge revenues.”); Seventh Report and Order at fn. 26 (ordering that the CLEC benchmark rate cap “applies, but is not necessarily limited to” the listed “specific rate elements and their equivalents,” including “interconnection charge”); 47 C.F.R. § 61.26(a)(3)(i) (defining “switched exchange access services” as “the functional equivalent of the ILEC interstate exchange access services typically associated with the following rate elements,” including “interconnection charge”).

charge rules for price cap ILECs, the PICC must be assessed within the Tariff for Birch's switched access services capped by the benchmark rate.¹³⁵

F. Because the PICC Must be Included as a Switched Access Charge Subject to the Benchmark Rate Cap, Birch's Aggregate Access Charges Exceed the Effective Benchmark Rate in the BellSouth Region.

In the BellSouth region, Birch's aggregate switched access charges comprise traditional usage-based rate elements as well as the separately-assessed PICC.¹³⁶ Although the PICC is a switched access charge subject to the benchmark rate cap, it is not included in the Tariff's charges for "Switched Access Service," but is billed from a separate section of the tariff titled "Miscellaneous Charges." Birch admits that it bills the benchmark rate through these usage-based rates—combined into a single aggregate per-minute rate, and in addition charges the PICC.¹³⁷

1. The Tariffed Access Rates Charged by BellSouth—the Competing ILEC—Define the Effective Benchmark Rate Capping Birch's Access Charges.

Birch's principal operations are within the BellSouth region where Birch competes with AT&T (f/k/a and hereinafter "BellSouth").¹³⁸ At all relevant times, Section 6 of BellSouth's interstate access tariff contained switched access charges broken down into individual rate elements that, collectively, add up to and constitute the benchmark rate in the BellSouth

¹³⁵ See Seventh Report and Order at ¶ 54 (CLEC Benchmark Rule applies the ILEC benchmark rate cap to "all interstate switched access service charges" assessed by a CLEC) (emphasis added).

¹³⁶ Compl. at ¶¶ 11–14, 22. For inexplicable reasons, Birch only assesses the PICC in the BellSouth region even though the language of its Tariff would apply the charge to all locations where Birch competes. *Id.* at ¶ 18.

¹³⁷ *Id.* at ¶¶ 11–14, 22.

¹³⁸ *Id.* at ¶ 18.

region.¹³⁹ During the relevant time frames, which include February 2015 to the present, BellSouth's interstate access tariff did not contain a PICC.¹⁴⁰

2. Birch's Aggregate Access Charges—including the PICC—Exceed the Benchmark Rate Cap.

In the BellSouth territory, Birch charged both (1) a single per-minute, usage-based switched access rate pursuant to Section 5.4.3 of the Tariff; and (2) a separate, flat-rate \$2.50 PICC access charge on a per-trunk basis for all multi-line businesses pursuant to Section 6.3 of the Tariff.¹⁴¹ The parties stipulate that Birch's usage-based switched access rate in Section 5.4.3 of the Tariff equals the effective BellSouth benchmark rate, and that if the Birch PICC were included in the calculation of the Birch switched exchange access service charge, this charge would exceed the benchmark rate by the amount of the PICC.¹⁴² In fact, when the PICC is translated into a per minute charge and added to the traditional usage based rates, Birch's access rates as charged to CenturyLink become approximately *ten times higher* than the benchmark.¹⁴³ Birch also assessed PICC charges on Level 3 that resulted in its aggregate switched access charges violating the benchmark rate cap.¹⁴⁴

For example, in March 2015, Birch originated and terminated over [REDACTED] minutes of

¹³⁹ *Id.* at ¶ 19.

¹⁴⁰ *Id.* at ¶ 20.

¹⁴¹ *Id.* at ¶¶ 11–14, 22.

¹⁴² *Id.* at ¶¶ 21, 24.

¹⁴³ *Id.* at ¶ 23.

¹⁴⁴ *Id.* at ¶ 28.

traffic for CenturyLink in the BellSouth region.¹⁴⁵ For these minutes, Birch billed and CenturyLink paid [REDACTED] for usage-based “Switched Access Services” from Section 5.4.3 of the Tariff.¹⁴⁶ In this same month, Birch separately billed CenturyLink [REDACTED] in PICC switched access fees from Section 6.3 of the Tariff, which CenturyLink paid.¹⁴⁷

In the BellSouth region, Birch always bills Petitioners the benchmark usage-based rates *plus* the PICC. Thus, Birch’s aggregate access charges exceed the benchmark rate by the exact amount it billed for the PICC—a switched access rate element that must be incorporated within the rate cap.¹⁴⁸

G. Birch’s Failure to Comply With the CLEC Benchmark Rule Codified in 47 C.F.R. § 61.26 Constitutes an Unjust and Unreasonable Practice in Violation of Section 201(b) of the Act.

Section 201(b) provides: “All charges, practices, classifications, and regulations for and in connection with [interstate] communication service shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is declared to be unlawful.”¹⁴⁹ As the Supreme Court recognized, “201(b)’s prohibitions have long been thought to extend to rates that diverge from FCC prescriptions, as well as rates or practices that are ‘unreasonable’ in light of their failure to reflect rules embodied in an agency regulation.”¹⁵⁰

¹⁴⁵ *Id.* at ¶ 27.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *See id.* at ¶ 24.

¹⁴⁹ 47 U.S.C. § 201.

¹⁵⁰ *Glob. Crossing Telecommunications, Inc. v. Metrophones Telecommunications, Inc.*, 550 U.S. 45, 58 (2007).

In establishing the CLEC Benchmark Rule for CLEC access charges, now codified in Commission regulation 47 C.F.R. § 61.26, the Seventh Report and Order expressly referred to Section 201 and stated that it “gives [the Commission] authority to ensure that CLEC rates are just and reasonable.”¹⁵¹ The Seventh Report and Order further specified that the “benchmark provides a bright line rule that permits a simple determination of whether a CLEC’s access rates are just and reasonable.”¹⁵² These explicit references to “just and reasonable” rates and practices—as well as the CLEC Benchmark Rule’s formal codification in a Commission regulation—confirm that Birch’s excessive access charges violate Section 201(b).¹⁵³

On Count I, CenturyLink seeks [REDACTED] in damages plus interest.¹⁵⁴ This constitutes the amount CenturyLink paid in PICC charges from March 2015 (two years before the Informal Complaint was initiated) until January 2017, when it started to dispute the PICC charges. Given the parties’ stipulation that the PICC is the exact amount Birch bills in excess of the benchmark, this number is simple to calculate because Birch bills this charge separately.¹⁵⁵

¹⁵¹ Seventh Report and Order at ¶ 21.

¹⁵² *Id.* at 40–41 (“We implement this restriction on the CLEC’s exercise of their monopoly power by establishing a benchmark level at which CLEC access rates will be conclusively presumed to be just and reasonable and at (or below) which they may therefore be tariffed.”).

¹⁵³ *See, e.g., In the Matter of AT&T Servs. Inc. & AT&T Corp., Complainants*, 30 F.C.C. Rcd. 2586, fn. 4 (“The Commission enacted these rules as a ‘bright line . . . that permits a simple determination as to whether CLEC access charges are just and reasonable’ under Section 201(b) of the Communications Act.”); *In the Matter of Qwest Commc’ns Co., LLC, Complainant*, 26 F.C.C. Rcd. 8332, 8337 (2011) (finding that violations of the Commission’s CLEC access charge rules constituted violations of Section 201(b)); *PAETEC Commc’ns, Inc. v. MCI Commc’ns Servs., Inc.*, 784 F. Supp. 2d 542, 546 (E.D. Pa. 2011) (finding that filed tariffs were “above the Benchmark and therefore unreasonable”).

¹⁵⁴ Compl. at ¶¶ 29, 42, 54.

¹⁵⁵ *Id.* at ¶ 29.

Up to and including January 6, 2017, CenturyLink sent Birch a series of dispute notices challenging the legality of Birch's aggregate switched access charges.¹⁵⁶ Before that date, CenturyLink had not withheld payments on access charges billed by Birch due to these particular benchmark violations. After that date, CenturyLink did dispute and withhold payments on this basis. From that time until January 2018, CenturyLink withheld payment on [REDACTED] in PICC charges and [REDACTED] in associated late payment charges billed by Birch, which CenturyLink should not have to pay.¹⁵⁷

Because Level 3 did not participate in the Informal Complaint, it calculates damages for the timeframe that constitutes two years before the filing of this Formal Complaint. From March 2016 until February 2018, Level 3 paid Birch [REDACTED] in PICC charges.¹⁵⁸ Again, given the parties' stipulation, the PICC charges are the amount that Birch billed in excess of the benchmark rates and constitute the damages to which Level 3 is entitled.¹⁵⁹ Level 3 has withheld payment on [REDACTED] in PICC charges, which it should not have to pay.¹⁶⁰

II. COUNT II: BIRCH ASSESSED ACCESS CHARGES WITHOUT A VALID TARIFF OR AGREEMENT IN EFFECT

As explained above, Birch's aggregate switched access charges violate the CLEC Benchmark Rule because they exceed the applicable benchmark rate cap. Tariffs containing

¹⁵⁶ See Exhibit O.

¹⁵⁷ Compl. at ¶ 30. These disputed PICC charges continue to grow monthly with each new billing cycle.

¹⁵⁸ *Id.* at ¶¶ 33, 43, 54.

¹⁵⁹ *Id.* at ¶ 33.

¹⁶⁰ *Id.* at ¶ 44. These disputed PICC charges continue to grow monthly with each new billing cycle.

these unlawful charges are void *ab initio* and warrant retroactive damages for the amounts paid to Birch pursuant to these tariffs, which were never “deemed lawful” under the Commission’s rules. Petitioners bring Count II separately from Count I because it (a) seeks different damages, and (b) is based on Birch’s unlawful assessment and collection of switched access charges without a valid, lawful tariff or a negotiated agreement in place.¹⁶¹ These actions contravene Section 201(b) apart from Birch’s underlying violations of C.F.R. § 61.26 addressed in Count I.¹⁶²

A. Because Birch’s Interstate Access Tariff is Void *Ab Initio*, Birch Violated Section 201(b) by Assessing and Collecting Switched Access Charges Without a Valid Tariff or Negotiated Agreement in Effect.

“Under the Commission’s benchmark regime, a carrier is prohibited from filing a tariff with rates above the benchmark; doing so violates the Commission’s Rules and renders the prohibited tariff void *ab initio*.”¹⁶³ Moreover, “[a] CLEC tariff for interstate switched access services that includes rates in excess of the applicable benchmark . . . is subject to mandatory de-tariffing.”¹⁶⁴ A tariff rendered void *ab initio* “was unlawful from the date of issuance.”¹⁶⁵

¹⁶¹ See *Bell Atl.-Delaware, Inc.*, 17 F.C.C. Rcd. 7902, 7903 (2002) (concluding that tariff “was void *ab initio* under Section 201(b) of the Act”).

¹⁶² See, e.g., *Connect Insured Tel., Inc. v. Qwest Long Distance, Inc.*, No. 3:10-CV-1897-D, 2012 WL 2995063, at *5 (N.D. Tex. July 23, 2012) (“Charging for switched access services without a filed interstate tariff or negotiated contract constitutes an unjust and unreasonable charge under § 201(b).”).

¹⁶³ *In the Matter of AT&T Servs. Inc. & AT&T Corp., Complainants*, 30 F.C.C. Rcd. 2586, 2595 (2015).

¹⁶⁴ *Id.* (citing Seventh Report and Order and 47 C.F.R. § 61.26) (concluding that tariff for switched access services was rendered void *ab initio* because CLEC’s aggregate charges exceeded the applicable benchmark rate).

¹⁶⁵ See *Glob. NAPs, Inc. v. F.C.C.*, 247 F.3d 252, 260 (D.C. Cir. 2001).

Here, Birch’s tariffed switched access charges—which include both the Tariff for “Switched Access Services” and the PICC—violate the CLEC Benchmark Rule and must be de-tariffed and rendered void *ab initio*. This means that Birch’s tariffed switched access charges were invalid and unlawful from the date of issuance and that Birch could not bill Petitioners for any such charges.¹⁶⁶

¹⁶⁶ The language used by the Commission and the courts confirm that when tariffs are void *ab initio*, the entire tariff—not just individual rate elements—are voided. For example, in the primary FCC order cited herein for the void *ab initio* doctrine, the Commission consistently delineated between individual rates/charges and the complete filed tariff, and ordered that the tariff itself was void *ab initio*:

A CLEC tariff for interstate switched access services that includes rates in excess of the applicable benchmark in Section 61.26 is subject to mandatory de-tariffing. Under the Commission's benchmark regime, a carrier is prohibited from filing a tariff with rates above the benchmark; doing so violates the Commission's Rules and renders the prohibited tariff void *ab initio*. Because GLC's aggregate tariff charges for its tandem services exceed the aggregate charged by AT&T Michigan for the same functions, the GLC Tariff exceeds the required benchmark and therefore violates Section 61.26(f). The GLC Tariff did not comply with Section 61.26(f) when GLC filed it; accordingly, the [GLC Tariff] is void *ab initio*. . . . By granting Count I and declaring the GLC Tariff void *ab initio* because GLC failed to benchmark its rates to those of AT&T Michigan, we have afforded AT&T all of the relief against GLC to which it would be entitled.

In the Matter of AT&T Servs. Inc. & AT&T Corp., Complainants, 30 F.C.C. Rcd. 2586 (2015) (emphasis added). Other FCC orders and judicial opinions likewise indicate that entire tariffs are rendered void *ab initio* based on challenges to individual tariff rates or provisions. *See In the Matter of AT&T Corp., Complainant*, BUREAUIDEB-17-MD-001, 2017 WL 5237210, at *10–11 (OHMSV Nov. 8, 2017) (“Where the Commission, as here, has prohibited the filing of a tariff with rates above the transitional default rate, such a tariff cannot benefit from ‘deemed lawful’ status. As of December 29, 2011, Aureon’s interstate switched access rates should not have exceeded \$0.00819 per minute. Aureon’s 2013 tariff filing raising the interstate rates above that level . . . consequently was unlawful when filed and void *ab initio*. AT&T argues that Aureon’s CEA rates also are unlawful because Aureon engaged in improper accounting practices. We need not reach this issue, because we have decided that Aureon's interstate Tariff is void *ab initio* [based on the separate argument challenging excessive switched access rates].”); *In the Matter of Sprint Commc’ns Co. L.P., Complainant*, 26 F.C.C. Rcd. 10780, 10781 (2011) (“We decline, however, to declare the Tariff void *ab initio* or to set aside its rates.”); *Glob. NAPs, Inc. v. F.C.C.*, 247 F.3d 252, 256 (D.C. Cir. 2001) (“[T]he FCC

Unless “a CLEC files *valid* interstate tariffs under Section 203 of the Act or enters into contracts with IXCs for the access services it intends to provide, it lacks authority to bill for those services.”¹⁶⁷ Tariffs that are rendered void *ab initio* were invalid and unlawful from the time of issuance.¹⁶⁸ LECs may not bill for *any* access services pursuant to such tariffs.

Because Birch’s tariffs for switched access charges are void *ab initio*, they were invalid at the time of filing in 2008. Moreover, Birch has never negotiated a commercial agreement for access rates with either CenturyLink or Level 3.¹⁶⁹ Therefore, Birch was unauthorized to bill Petitioners for any access services. This practice violated Section 201(b) of the Act.¹⁷⁰

B. Petitioners are Entitled to Retroactive Damages Because Birch’s PICC Was Never

declared GNAPs’ *tariff* unlawful and void *ab initio* . . . [because] the *challenged tariff provisions* violated [statutory requirements].”).

¹⁶⁷ *In the Matter of AT&T Corp., Complainant, v. All American Telephone Co.*, 28 F.C.C. Rcd. 3477, 3494 (2013) (emphasis added); *see also Peerless Network, Inc. v. MCI Commc’n Servs., Inc.*, No. 14 C 7417, 2015 WL 2455128, at *10 (N.D. Ill. May 21, 2015) (The filed rate doctrine bars [LECs] from . . . recovering . . . charges outside of a [valid] filed tariff or negotiated contract.”). There are cases where the Commission finds a tariff void *ab initio* and invalidates individual rates. However, it appears that these cases are limited by the individual requests of the petitioners. *See Adventure Commc’ns Tech., LLC v. Sprint Commc’ns Co. L.P.*, 224 F. Supp. 3d 706, 719 (S.D. Iowa 2015) (“Qwest asked the Commission to declare Farmers’ *rates* void *ab initio* and to hold Farmers liable for retrospective damages.”); *Iowa Network Servs., Inc. v. AT&T Corp.*, No. 14-CV-03439 (PGS), 2015 WL 5996301, at *7 (D.N.J. Oct. 14, 2015) (“AT&T’s answer and counterclaim alleges sophisticated practices by INS that may render some *charges* void under the tariff.”). Petitioners do not limit their request here; because the tariff is void, Birch lacked the capacity to bill Petitioners for access services at all. The Commission should issue damages accordingly.

¹⁶⁸ *See Glob. NAPs*, 247 F.3d at 258–260 (D.C. Cir. 2001) (“[T]ariffs . . . must comply with the applicable statutory and regulatory requirements. Those that do not may be declared invalid.”) (finding tariff “void *ab initio* and invalid from the date it was published”).

¹⁶⁹ Compl. at ¶ 10.

¹⁷⁰ *See, e.g., Connect Insured Tel., Inc. v. Qwest Long Distance, Inc.*, No. 3:10-CV-1897-D, 2012 WL 2995063, at *5 (N.D. Tex. July 23, 2012) (“Charging for switched access services without a filed interstate tariff or negotiated contract constitutes an unjust and unreasonable charge under § 201(b).”).

“Deemed Lawful” Under 47 U.S.C. § 204(a)(3).

47 U.S.C. § 204(a)(3) provides, in relevant part, that “any new or revised charge, classification, regulation, or practice . . . shall be deemed lawful and shall be effective . . . 15 days (in the case of an increase in rates) after the date on which it is filed with the Commission unless the Commission takes [investigation or suspension] . . . before the end of that . . . 15-day period.”¹⁷¹ Therefore, “[t]o elect the streamlined procedure [in Section 204(a)(3)], a LEC must file its tariff . . . fifteen (15) days before its effective date.”¹⁷² In receiving tariff filings under the streamlined process pursuant to Section 204(a)(3), the Commission must “have the opportunity to review the filing before it becomes effective and subject only to prospective invalidation.”¹⁷³ “The purpose of these notice provisions is to allow the FCC sufficient time to challenge the LEC’s rates, if necessary, before the rates are deemed lawful.”¹⁷⁴ Tariffs that are deemed lawful would typically “not subject the filing carrier to liability for damages for services provided prior to the determination of unlawfulness.”¹⁷⁵ On the other hand, customers who paid for services pursuant to unreasonable tariffs that were never deemed lawful may recover damages prior to such determination.¹⁷⁶

¹⁷¹ See *ACS of Anchorage, Inc. v. F.C.C.*, 290 F.3d 403, 411 (D.C. Cir. 2002).

¹⁷² *N. Cty. Commc'ns Corp. v. Verizon Glob. Networks, Inc.*, 685 F. Supp. 2d 1112, 1119–20 (S.D. Cal. 2010).

¹⁷³ *Iowa Network Servs., Inc. v. Qwest Corp.*, 385 F. Supp. 2d 850, 892 (S.D. Iowa 2005), *aff'd*, 466 F.3d 1091 (8th Cir. 2006).

¹⁷⁴ *N. Cty. Commc'ns Corp. v. Verizon Glob. Networks, Inc.*, 685 F. Supp. 2d 1112, 1119–20 (S.D. Cal. 2010) (citing Commission orders).

¹⁷⁵ *Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996*, 12 FCC Rcd 2170, 2183 (1997).

¹⁷⁶ *Id.*

“LEC tariffs filed outside the scope of Section 204(a)(3) shall not be ‘deemed lawful’ because, by definition, they are not filed pursuant to that section and are not, therefore, accorded the treatment provided for in that section.”¹⁷⁷ Tariffs that become effective before the 15-day period ends do not fall within Section 204(a)(3) and cannot receive “deemed lawful” status limiting retroactive damages.¹⁷⁸

Here, Birch’s initial 2008 tariff filings, which included its per-minute rates for “Switched Access Services” under Section 5.4.3 and the separate PICC under Section 6.3, were issued on October 23, 2008 and effective the very next day.¹⁷⁹ Because Birch chose to file its original 2008 tariffs with only one day’s notice, the tariffs became effective earlier than 15 days after the tariffs were filed. Therefore, the PICC was never deemed lawful and is therefore subject to retroactive refund damages. Of course, for tariffs rendered void *ab initio* for failure to comply with the CLEC Benchmark Rule, it does not matter if the filed tariff was originally deemed lawful under 47 U.S.C. § 204(a)(3).¹⁸⁰ However, because Birch’s PICC was never deemed lawful in the first place, Birch cannot challenge an award for retroactive damages based on its unlawful assessment of switched access charges without a valid tariff or agreement in effect.

For the reasons stated above, because Birch’s tariffed switched access charges are void *ab initio*, it could not bill Petitioners for any switched access services, and Petitioners are entitled

¹⁷⁷ *Id.* at 2189.

¹⁷⁸ *N. Cty. Commc’ns Corp.*, 685 F. Supp. 2d at 1119–20 (holding that LEC “did not elect the streamlined procedure and, therefore, cannot avail itself of ‘deemed lawful’ status” because its “tariff was issued January 14, 2003 and became effective January 17, 2003, i.e., three days later.”).

¹⁷⁹ Compl. at ¶¶ 9, 15–16.

¹⁸⁰ *See In the Matter of AT&T Servs. Inc. & AT&T Corp., Complainants*, 30 F.C.C. Rcd. at 2595 (finding tariff void *ab initio* even though it “was presumed lawful when it was filed”).

to retroactive refund damages in the amount of [REDACTED] for CenturyLink, [REDACTED] for Level 3, plus any additional payments made after the filing of this Complaint, including any payments made in connection with the historically disputed 8YY and host-remote additive charges.¹⁸¹ In addition, Petitioners are entitled to recover interest.

III. AN ORDER CONCLUDING THE COMMISSION’S INVESTIGATION OF THE MATTERS RAISED IN THIS COMPLAINT SHOULD BE ISSUED WITHIN FIVE MONTHS PURSUANT TO 47 U.S.C. § 208(B)(1).

47 U.S.C. § 208(b)(1) provides: “[T]he Commission shall, with respect to any investigation under this section of the lawfulness of a charge, classification, regulation, or practice, issue an order concluding such investigation within 5 months after the date on which the complaint was filed.”¹⁸² Formal Complaints submitted under Section 208 trigger this formal fast-track process.¹⁸³

As outlined above, Petitioners bring this Complaint pursuant to Sections 201 and 205–209 of the Communications Act (“Act”), 47 U.S.C. §§ 201, 205–209. As permitted under Section 208, Petitioners assert Section 201(b) violations against Birch for failure to comply with the Commission’s CLEC Benchmark Rule for CLEC switched access services. Birch’s switched

¹⁸¹ Compl. at ¶¶ 37, 56.

¹⁸² See also *AD HOC Telecom. Users Comm. v. F.C.C.*, 572 F.3d 903, 909 (D.C. Cir. 2009) (stating that “[u]nder § 208, all complaints as to ‘the lawfulness of a charge, classification, regulation, or practice’ will be investigated and resolved within five months,” and noting that “the FCC reiterated its commitment to the five-month mandate . . .”).

¹⁸³ See, e.g., *In the Matters of Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) from Title II & Computer Inquiry Rules with Respect to Its Broadband Servs. Petition of BellSouth Corp. for Forbearance Under Section 47 U.S.C. § 160(c) from Title II & Computer Inquiry Rules with Respect to Its Broadband Servs.*, 22 F.C.C. Rcd. 18705, 18726 (2007) (noting that the “formal complaint process in Section 208 of the Act and Sections 1.720 through 1.735 of the Commission’s rules will continue to apply,” and that such complaint “will be resolved within five months, as prescribed by Section 208(b)(1) of the Act.”).

access charges—including the separately-assessed PCCC rate element—exceed the applicable benchmark. Therefore, because this Complaint challenges the lawfulness of Birch’s charges and billing practices in connection with its switched access services, Petitioners respectfully seek relief pursuant to 47 U.S.C. § 208(b)(1) and request that the Commission issue a final order within five months after the Complaint is filed.

IV. CONCLUSION

For the foregoing reasons, the Commission should grant the relief sought in Petitioners’ Complaint and find that Birch violated Section 201(b) of the Act.

Respectfully submitted,

**CENTURYLINK COMMUNICATIONS, LLC
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Communications, LLC and Level 3
Communications, LLC*

March 23, 2018

TAB B

**Before the
Federal Communications Commission
Washington, DC 20554**

| | | |
|----------------------------------|---|-----------------------|
| In the Matter of |) | |
| |) | Docket No. 18-73 |
| CenturyLink Communications, LLC, |) | File No. EB-18-MD-002 |
| and Level 3 Communications, LLC, |) | |
| |) | |
| Complainants |) | |
| |) | |
| v. |) | |
| |) | |
| Birch Communications, Inc., |) | |
| |) | |
| Defendant. |) | |

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

The requirement in 47 C.F.R. § 1.721(a)(6) to submit Proposed Findings of Fact and Conclusions of Law was waived through Commission order dated March 15, 2018.

Respectfully submitted,

**CENTURYLINK COMMUNICATIONS, LLC
LEVEL 3 COMMUNICATIONS, LLC**



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*Attorneys for Complainant CenturyLink
Communications, LLC and Level 3
Communications, LLC*

March 23, 2018

TAB C

**Before the
Federal Communications Commission
Washington, DC 20554**

| | | |
|----------------------------------|---|-----------------------|
| In the Matter of |) | |
| |) | Docket No. 18-73 |
| CenturyLink Communications, LLC, |) | File No. EB-18-MD-002 |
| and Level 3 Communications, LLC, |) | |
| |) | |
| Complainants |) | |
| |) | |
| v. |) | |
| |) | |
| Birch Communications, Inc., |) | |
| |) | |
| Defendant. |) | |

INFORMATION DESIGNATION

CenturyLink Communications, LLC (“CenturyLink”) and Level 3 Communications, LLC (“Level 3”), through its attorneys and pursuant to 47 C.F.R. § 1.721(a)(10), submit this Information Designation in connection with the above-captioned Formal Complaint against Birch Communications, Inc. (“Birch”).

I. PERSONS WITH KNOWLEDGE

1. Name: Timothy M. Boucher
Address: 931 14th Street, Suite 1230, Denver, Colorado 80202
Position: Senior Counsel, CenturyLink
Description of Facts Within Knowledge: Overall knowledge of the underlying dispute, the Informal Complaint process and mediation, and related facts and issues.

 2. Name: Adam L. Sherr
Address: 931 14th Street, Suite 1230, Denver, Colorado 80202
Position: Associate General Counsel, CenturyLink
Description of Facts Within Knowledge: Overall knowledge of the underlying dispute, the Informal Complaint process and mediation, and related facts and issues.
-

3. Name: Patrick Welch
Address: 931 14th Street, Suite 1230, Denver, Colorado 80202
Position: Market Development Manager
Description of Facts Within Knowledge: Overall knowledge of the underlying dispute, including the bills from Birch.
4. Name: Scott Johnson
Address: 931 14th Street, Suite 1230, Denver, Colorado 80202
Position: Senior Network Expense Analyst
Description of Facts Within Knowledge: Billing data, payments, tariff rates, individual rate elements, and other details in connection with the switched access services that Birch provided to Level 3, including the billings from Birch.
5. Tami Spocogee
Address: 12150 Monument Drive, Suite 400, Fairfax, Virginia 22033
Position: Senior Audit Consultant, TEOCO Corporation
Description of Facts Within Knowledge: Billing data, payments, tariff rates, individual rate elements, incumbent local exchange carrier benchmark rates, and other details in connection with the switched access services that Birch provided to CenturyLink and Level 3.

II. DESCRIPTION OF DOCUMENTS, DATA COMPILATIONS, AND TANGIBLE THINGS

1. Name: Data Compilation, “Amounts Paid/Disputed by CenturyLink with Birch for PICC Charges”
Date Prepared / Disseminated: On or around February 27, 2018
Author: Tami Spocogee, TEOCO Corporation
Recipients: CenturyLink
Physical Location: N/A
Relevance: Damages, Prayer for Relief
2. Name: Data Compilation, “Amounts Paid/Disputed by CenturyLink with Birch for All Tariff Charges”
Date Prepared / Disseminated: On or around February 27, 2018
Author: Tami Spocogee, TEOCO Corporation
Recipients: CenturyLink
Physical Location: N/A
Relevance: Damages, Prayer for Relief
3. Name: Data Compilation, “Amounts Paid/Disputed by Level 3 with Birch for PICC and Separately for Usage-Based Tariff Charges”
Date Prepared / Disseminated: On or around February 27, 2018
Author: Tami Spocogee, TEOCO Corporation
Recipients: CenturyLink and Level 3
Physical Location: N/A
Relevance: Damages, Prayer for Relief

4. Name: Electronic CABS Access Bills
Date Prepared / Disseminated: February 2015 through the present
Author: Birch Communications, Inc.
Recipients: CenturyLink and Level 3
Physical Location: N/A
Relevance: Charges billed by Birch to CenturyLink and Level 3 for switched access services, including the PICC, usage-based charges, late payment charges, and payments posted; damages, Prayer for Relief.
5. Name: Other Electronic Invoice Records
Date Prepared / Disseminated: February 2015 through the present
Author: Birch Communications, Inc.
Recipients: CenturyLink and Level 3
Physical Location: N/A
Relevance: Charges billed by Birch to CenturyLink and Level 3 for switched access services, including the PICC, usage-based charges, late payment charges, and payments posted; damages, Prayer for Relief.
6. Name: Electronic Payment Records
Date Prepared / Disseminated: February 2015 through the present
Author: CenturyLink
Recipients: N/A
Physical Location: N/A
Relevance: Payments made and posted by CenturyLink for Birch bills for switched access charges, including the PICC.
7. Name: “Informal Complaint by *CenturyLink Communications, LLC v. Birch Communications/Access Integrated Networks* and Request for Mediation”
Date Prepared / Disseminated: March 7, 2017
Author: Timothy M. Boucher
Recipients: Marlene H. Dortch, Secretary, Federal Communications Commission; Rosemary McEnery, Acting Chief, Market Disputes Resolution Division, Federal Communications Commission; Lisa Saks, Assistant Chief, Market Disputes Resolution Division, Federal Communications Commission; Greg Darnell, Director, Birch Communications, Inc.
Physical Location: N/A
Relevance: Applicable timeframes for damages
8. Name: Birch Communications, Inc.’s Response to CenturyLink’s Informal Complaint, “Re: EB-17-MDIC-0001, CenturyLink Communications, LLC v. Birch Communications, Inc.”
Date Prepared / Disseminated: September 28, 2017
Authors: Cherie R. Kiser, Thorn Rosenthal, and Angela F. Collins, Cahill Gordon & Reindel LLP, Counsel for Birch Communications, Inc.
Recipients: Marlene H. Dortch, Secretary, Federal Communications Commission; Lisa J. Saks, Assistant Chief, Market Disputes Resolution Division, Federal Communications Commission; Erin Boone, Commission Counsel, Market Disputes Resolution Division, Federal Communications Commission; Timothy

M. Boucher, Senior Counsel, CenturyLink; Ross Dino, Counsel for CenturyLink; Gordon P. Williams, Jr., Senior Vice President and General Counsel, Birch Communications, Inc.

Physical Location: N/A

Relevance: Applicable timeframes for damages

9. Name: Birch Communications Access Services Tariff, Tariff FCC No. 1
Date Prepared / Disseminated: October 23, 2008
Author: Birch Communications, Inc.
Recipients: N/A
Physical Location: N/A (CCMI – Telview System)
Relevance: Switched access charge usage-based rates charged by Birch to CenturyLink and Level 3; PICC rates charged by Birch to CenturyLink and Level 3; no “deemed lawful” status for Birch’s tariff.
10. Name: Birch Communications 2014 Rate Sheets
Date Prepared / Disseminated: 2014
Author: Birch Communications, Inc.
Recipients: N/A
Physical Location: N/A (CCMI – Telview System)
Relevance: Switched access charge usage-based rates charged by Birch to CenturyLink and Level 3; PICC rates charged by Birch to CenturyLink and Level 3; no “deemed lawful” status for Birch’s tariff.
11. Name: Birch Communications 2015 Rate Sheets
Date Prepared / Disseminated: 2015
Author: Birch Communications, Inc.
Recipients: N/A
Physical Location: N/A (CCMI – Telview System)
Relevance: Switched access charge usage-based rates charged by Birch to CenturyLink and Level 3; PICC rates charged by Birch to CenturyLink and Level 3; no “deemed lawful” status for Birch’s tariff.
12. Name: Birch Communications 2016 Rate Sheets
Date Prepared / Disseminated: 2016
Author: Birch Communications, Inc.
Recipients: N/A
Physical Location: N/A (CCMI – Telview System)
Relevance: Switched access charge usage-based rates charged by Birch to CenturyLink and Level 3; PICC rates charged by Birch to CenturyLink and Level 3; no “deemed lawful” status for Birch’s tariff.
13. Name: Birch Communications 2017 Rate Sheets
Date Prepared / Disseminated: 2017
Author: Birch Communications, Inc.
Recipients: N/A
Physical Location: N/A (CCMI – Telview System)

Relevance: Switched access charge usage-based rates charged by Birch to CenturyLink and Level 3; PICC rates charged by Birch to CenturyLink and Level 3; no “deemed lawful” status for Birch’s tariff.

14. Name: Portions of Section 6 from BellSouth 2014 Interstate Access Tariff
Date Prepared / Disseminated: 2014
Author: BellSouth
Recipients: N/A
Physical Location: N/A (CCMI – Telview System)
Relevance: Competing ILEC benchmark rate for switched access services
15. Name: Portions of Section 6 from BellSouth 2015 Interstate Access Tariff
Date Prepared / Disseminated: 2015
Author: BellSouth
Recipients: N/A
Physical Location: N/A (CCMI – Telview System)
Relevance: Competing ILEC benchmark rate for switched access services
16. Name: Portions of Section 6 from BellSouth 2016 Interstate Access Tariff
Date Prepared / Disseminated: 2016
Author: BellSouth
Recipients: N/A
Physical Location: N/A (CCMI – Telview System)
Relevance: Competing ILEC benchmark rate for switched access services
17. Name: Portions of Section 6 from BellSouth 2017 Interstate Access Tariff
Date Prepared / Disseminated: 2017
Author: BellSouth
Recipients: N/A
Physical Location: N/A (CCMI – Telview System)
Relevance: Competing ILEC benchmark rate for switched access services
18. Name: Affidavit of Tami Spocogee
Date Prepared / Disseminated: March 23, 2018
Author: Tami Spocogee and Counsel for CenturyLink and Level 3
Recipients: N/A
Physical Location: N/A
Relevance: Bills, charges, rate elements, benchmark rates, payments, and other details in connection with the switched access services that Birch provided to CenturyLink and Level 3, for purpose of liability and damages.
19. Dispute Notice, “Re: CenturyLink Dispute of Birch Communications/Access Integrated Networks Switched Access Charges”
Date Prepared / Disseminated: January 6, 2017
Author: CenturyLink Communications, LLC
Recipients: Birch Communications, Inc.
Physical Location: CenturyLink Headquarters
Relevance: Notice as to disputed PICC charges and other charges

20. Joint Stipulation of Facts
Date Prepared / Disseminated: March 2018
Author: CenturyLink Communications, LLC; Level 3 Communications, LLC; and Birch Communications, Inc.
Recipients: N/A
Physical Location: N/A
Relevance: Stipulated facts on relevant issue
21. Certified Letters, “Re: CenturyLink Communications, LLC and Level 3 Communications, LLC v. Birch Communications, Inc.”
Date Prepared / Disseminated: March 5, 2018
Author: Counsel for CenturyLink Communications, LLC and Level 3 Communications, LLC
Recipients: Birch Communications, Inc.; Corporation Services Company; Corporation Guarantee & Trust Company
Physical Location: Offices of recipients listed above
Relevance: Allegations in forthcoming Formal Complaint; settlement efforts
22. Response to Certified Letters, “Re: CenturyLink Communications, LLC and Level 3 Communications, LLC v. Birch Communications, Inc.”
Date Prepared / Disseminated: March 9, 2018
Author: Counsel for Birch Communications, Inc.
Recipients: CenturyLink Communications, LLC and Level 3 Communications, LLC
Physical Location: Office of Counsel for CenturyLink Communications LLC and Level 3 Communications LLC
Relevance: Settlement efforts and purported defenses to Petitioners’ claims

III. DESCRIPTION OF THE MANNER OF IDENTIFICATION OF PERSONS WITH KNOWLEDGE AND THE RELEVANT DOCUMENTS, DATA COMPILATIONS, AND TANGIBLE THINGS

As reflected in the parties’ stipulations, the key issue in the above-captioned Formal Complaint is whether the PICC must be incorporated and capped within the CLEC benchmark rate for switched access services. The parties agree that if the PICC must be included as a switched access charge rate element within Birch’s aggregate switched access charges, these access charges would exceed the benchmark rate by the amount of the PICC. As a result, very few factual disputes exist between the parties, and most of the few relevant documents (Birch’s tariff and accompanying rate sheets, the BellSouth tariff, etc.) are already publically available or in Birch’s possession. The parties have also stipulated to the underlying numbers on billed

charges, payments posted, and potential damages as to both CenturyLink and Level 3, with the exception of total switched access charges billed by Birch to CenturyLink and Level 3 during the relevant timeframes.

The individuals with information listed above were identified by analyzing communications and submissions in connection with CenturyLink's March 7, 2017 Informal Complaint (which addressed the same underlying issue); by engaging those individuals tasked to identify, analyze, and compile billing and payment data for CenturyLink and Level 3 with respect to Birch's switched access services; and by including other individuals known to have knowledge about the underlying dispute and facts. The relevant documents and data compilations attached to this Formal Complaint were identified based on a review of the few documents and data compilations germane to the underlying PICC dispute. CenturyLink engaged Tami Spocogee through the TEOCO Corporation to compile and summarize the relevant payment and billing data, which the parties have largely stipulated to.

Respectfully submitted,

**CENTURYLINK COMMUNICATIONS, LLC
LEVEL 3 COMMUNICATIONS, LLC**



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Adam.Sherr@CenturyLink.com

*Attorneys for Complainant CenturyLink
Communications, LLC and Level 3
Communications, LLC*

March 23, 2018

TAB D

[Formal Complaint Intake Form]

SECTION 208 FORMAL
COMPLAINT INTAKE FORM

| | |
|---|---|
| 1. Case Name: | CenturyLink Communications, LLC and Level 3 Communications, LLC v. Birch Communications, Inc. Docket No. 18-73, File No. EB-18-MD-002 |
| 2. Complainant's Name, Address, Phone and Facsimile Number, e-mail address (if applicable): | CenturyLink Communications, LLC: 931 14th Street, Suite 1230, Denver, Colorado 80202; (303) 992-1400 Level 3 Communications, LLC: 1025 El Dorado Boulevard, Broomfield, Colorado 80021; (720) 888-2750 |
| 3. Defendant's Name, Address, Phone and Facsimile Number (to the extent known), e-mail address (if applicable): | Birch Communications, Inc.: 320 Interstate North Parkway, Atlanta, Georgia 30339; (866) 424-2600 |
| 4. Complaint alleges violation of the following provisions of the Communications Act of 1934, as amended: | 47 U.S.C. § 201(b) |

Answer (Y)es, (N)o or N/A to the following:

- Y 5. Complaint conforms to the specifications prescribed by 47 C.F.R. Section 1.734.
- Y 6. Complaint complies with the pleading requirements of 47 C.F.R. Section 1.720.
- Y 7. Complaint conforms to the format and content requirements of 47 C.F.R. Section 1.721, including but not limited to:
- Y a. Complaint contains a complete and fully supported statement of facts, including a detailed explanation of the manner in which the defendant is alleged to have violated the provisions of the Communications Act of 1934, as amended, or Commission rules or Commission orders.
- N (waived) b. Complaint includes proposed findings of fact, conclusions of law, and legal analysis relevant to the claims and arguments set forth in the Complaint.
- Y c. If damages are sought in this Complaint, the Complaint comports with the specifications prescribed by 47 C.F.R. Section 1.722(a), (c).
- Y d. Complaint contains a certification that complies with 47 C.F.R. Section 1.721(a)(8), and thus includes, among other statements, a certification that: (1) complainant mailed a certified letter outlining the allegations that formed the basis of the complaint it anticipated filing with the Commission to the defendant carrier; (2) such letter invited a response within a reasonable period of time; and (3) complainant has, in good faith, discussed or attempted to discuss, the possibility of settlement with each defendant prior to the filing of the formal complaint.
- Y e. A separate action has been filed with the Commission, any court, or other government agency that is based on the same claim or the same set of facts stated in the Complaint, in whole or in part. If yes, please explain:
March 7, 2017 Informal Complaint filed by CenturyLink; Birch Communications v. CenturyLink Communications, No. 17-1367-JEJ, United States District Court for the District of Delaware (filed by Birch; case stayed pending referral order)
- N f. Complaint seeks prospective relief identical to the relief proposed or at issue in a notice-and-comment proceeding that is concurrently before the Commission. If yes, please explain:
- Y g. Complaint includes an information designation that contains:
- Y (1) A complete description of each document, data compilation, and tangible thing in the complainant's possession, custody, or control that is relevant to the facts alleged with particularity in the Complaint, including: (a) its date of preparation, mailing, transmittal, or other dissemination, (b) its author, preparer, or other source, (c) its recipient(s) or intended recipient(s), (d) its physical location, and (e) its relevance to the matters contained in the Complaint; and
- Y (2) The name, address, and position of each individual believed to have firsthand knowledge of the facts alleged with particularity in the Complaint, along with a description of the facts within any such individual's knowledge; and
- Y (3) A complete description of the manner in which the complainant identified all persons with information and designated all documents, data compilations, and tangible things as being relevant to the dispute, including, but not limited to, identifying the individual(s) that conducted the information search and the criteria used to identify such persons, documents, data compilations, tangible things, and information.
- Y h. Attached to the Complaint are copies of all affidavits, tariff provisions, written agreements, offers, counter-offers, denials, correspondence, documents, data compilations, and tangible things in the complainant's possession, custody, or control, upon which the complainant relies or intends to rely to support the facts alleged and legal arguments made in the Complaint.
- Y i. Certificate of service is attached and conforms to the specifications prescribed by 47 C.F.R. Sections 1.47(g) and 1.735(f).
- Y j. Verification of payment of filing fee in accordance with 47 C.F.R. Sections 1.721(13) and 1.1106 is attached.
- N/A 8. If complaint is filed pursuant to 47 U.S.C. Section 271(d)(6)(B), complainant indicates therein whether it is willing to waive the 90-day complaint resolution deadline.

- Y 9. All reported FCC orders relied upon have been properly cited in accordance with 47 C.F.R. Sections 1.14 and 1.720(i).
- Y 10. Copy of Complaint has been served by hand-delivery on either the named defendant or one of the defendant's registered agents for service of process in accordance with 47 C.F.R. Section 1.47(e) and 47 C.F.R. Section 1.735(c).
- Y 11. If more than ten pages, the Complaint contains a table of contents and summary, as specified in 47 C.F.R. Section 1.49(b) and (c).
- Y 12. The correct number of copies required by 47 C.F.R. Section 1.51(c), if applicable, and 47 C.F.R. Section 1.735(b) have been filed.
- Y 13. Complaint has been properly signed and verified in accordance with 47 C.F.R. Section 1.52 and 47 C.F.R. Section 1.734(c).
- Y 14. If Complaint is by multiple complainants, it complies with the requirements of 47 C.F.R. Section 1.723(a).
- Y 15. If Complaint involves multiple grounds, it complies with the requirements of 47 C.F.R. Section 1.723(b).
- N/A 16. If Complaint is directed against multiple defendants, it complies with the requirements of 47 C.F.R. Section 1.735(a)-(b).
- Y 17. Complaint conforms to the specifications prescribed by 47 C.F.R. Section 1.49.
-

Instructions

1. This form must be completed by the Complainant.
2. Submit a completed intake form with any formal complaint to indicate that the complaint satisfies all procedural and substantive requirements of the Communications Act of 1934, as amended, and applicable FCC rules.
3. The original form must be filed with the original complaint and a copy of the form attached to each copy of the complaint that is either filed with the Commission or served on the opposing party.

Notice: Sections 206 to 209 of the Communications Act of 1934, as amended, provide the statutory framework for our current rules for resolving formal complaints filed against common carriers. Section 208(a) authorizes complaints by any person "complaining of anything done or omitted to be done by any common carrier" subject to the provisions of the Act. Section 208(a) specifically states that "it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper."

Pursuant to 47 C.F.R. Section 1.721(a)(12), a completed intake form must be submitted with any formal complaint to indicate that the complaint satisfies the applicable procedural and substantive requirements under the Communications Act of 1934, as amended, and the FCC's rules. The information will be used by the Commission to determine the sufficiency of the complaint and aid its processing by the staff.

Remember: You are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid Office of Management and Budget (OMB) control number. This collection has been assigned an OMB control number of 3060-0411.

We have estimated that each response to this collection of information will take, on average, 30 minutes. Our estimate includes the time to read the instructions, look through relevant records, gather and maintain the required data, and actually complete and review the intake form. If you have any comments on this estimate, or how we can improve the collection and reduce the burden it causes you, please write the Federal Communications Commission, OMD-PERF, Washington, D.C. 20554, Paperwork Reduction Project (3060-0411). We also will accept your comments via Internet if you send them to Vanessa.Lamb@fcc.gov Please DO NOT SEND COMPLETED FORMS TO THIS ADDRESS.

The foregoing Notice is required by the Privacy Act of 1974, P.L. 93-579, December 31, 1994, 5 U.S.C. 552a(e)(3), and the Paperwork Reduction Act of 1995, P.L. 104-13, 44 U.S.C. Section 3501.

The Commission is authorized under the Communications Act of 1934, as amended, to collect the personal information we request in this form. We will use the information that you provide to determine the sufficiency of the complaint and to assist in processing and resolving the complaint. If we believe there may be a violation or potential violation of a Federal or state statute or regulation, rule, or order issued by a Federal or state agency, your form may be referred to the appropriate Federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing the statute, rule, regulation, or order. In certain cases, the information in your Form may be disclosed to the Department of Justice, court, or other adjudicative body when: (a) the Commission; or (b) any employee of the Commission; or (c) the United States government, is a party to a proceeding before the body or has an interest in the proceeding.

If you owe a past due debt to the Federal government, the taxpayer identification number (such as your social security number) and other information you provide also may be disclosed to the Department of the Treasury Financial Management Service, other Federal agencies, and/or your employer to offset your salary, IRS tax refund, or other payments to collect that debt. The Commission also may provide this information to those agencies through the matching of computer records where authorized.

TAB E

**Before the
Federal Communications Commission
Washington, DC 20554**

| | | |
|----------------------------------|---|-----------------------|
| In the Matter of |) | |
| |) | Docket No. 18-73 |
| CenturyLink Communications, LLC, |) | File No. EB-18-MD-002 |
| and Level 3 Communications, LLC, |) | |
| |) | |
| Complainant |) | |
| |) | |
| v. |) | |
| |) | |
| Birch Communications, Inc., |) | |
| |) | |
| Defendant. |) | |

VERIFICATION OF PAYMENT

I, Charles W. Steese, hereby declare under penalty of perjury that, on March 23, 2018, Complainants CenturyLink Communications, LLC (“CenturyLink”) and Level 3 Communications, LLC (“Level 3”) submitted an electronic payment in the amount of \$230.00 through the Commission’s electronic filing and payment system “Fee Filer” (www.fcc.gov/feefiler) in accordance with 47 C.F.R. §§ 1.721(a)(13), 1.1106. CenturyLink’s FCC Registration Number is 0018-4219-41. Level 3’s FCC Registration Number is 0003-7238-22.



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March 23, 2018

TAB F

CERTIFICATE OF SERVICE

I, Martin J. Estevao, hereby certify that, on March 23, 2018, copies of the attached Formal Complaint and all attachments thereto were delivered via hand-delivery to:

Chérie R. Kiser
Thorn Rosenthal
c/o Birch Communications, Inc.
Cahill Gordon &Reindel LLP
1990 K Street, N.W., Suite 950
Washington, D.C. 20006

A handwritten signature in dark ink, appearing to read 'Martin J. Estevao', is written over a horizontal line.

Martin J. Estevao

VOLUME II

Exhibit A

**Before the
Federal Communications Commission
Washington, DC 20554**

| | | |
|-------------------------------------|---|------------------------------|
| In the Matter of |) | |
| |) | |
| CenturyLink Communications, LLC and |) | File No. <u>EB-18-MD-002</u> |
| Level 3 Communications, LLC |) | |
| |) | |
| Complainants, |) | |
| |) | |
| v. |) | |
| |) | |
| Birch Communications, Inc., |) | |
| |) | |
| Defendant. |) | |

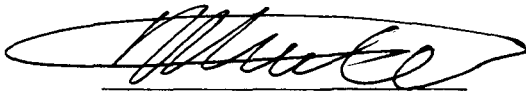
JOINT STIPULATION OF FACTS

1. Birch Communications, Inc. (“Birch”), a competitive local exchange carrier, charges CenturyLink Communications, LLC (“CenturyLink”), an interexchange carrier, for switched exchange access services pursuant to the Access Services Tariff of Birch Communications, Tariff FCC No. 1 (the “Birch FCC Tariff”).
2. Birch charges Level 3 Communications, LLC (“Level 3”), an interexchange carrier, for switched exchange access services pursuant to the Birch FCC Tariff.
3. For purposes of this case, Birch is a “CLEC” as that term is defined in 47 C.F.R. § 61.26(a)(1) and is not a “Rural CLEC” as that term is defined in 47 C.F.R. 61.26(a)(6).
4. For purposes of this case, CenturyLink and Level 3 are “interexchange carriers” or “IXCs” as that term is defined in 47 C.F.R. § 64.4001(d).
5. For purposes of this case, Presubscribed Interexchange Carrier Charge or “PICC” refers to “a monthly, flat-rated charge assessed to the interexchange carrier for each presubscribed local exchange service line or trunk” as described in Section 6.3 of the Birch FCC Tariff.
6. There is no commercial agreement between Birch and CenturyLink that governs the rates that Birch may charge to CenturyLink for switched exchange access service. The parties agree that this dispute pertains to the application of the Commission’s benchmark rule in 47 C.F.R. § 61.26(c).
7. There is no commercial agreement between Birch and Level 3 that governs the rates that Birch may charge to Level 3 for switched exchange access service. The parties agree that

this dispute pertains to the application of the Commission's benchmark rule in 47 C.F.R. § 61.26(c).

8. There is no commercial agreement between Birch and CenturyLink pursuant to which Birch assesses a PICC on CenturyLink.
9. There is no commercial agreement between Birch and Level 3 pursuant to which Birch assesses a PICC on Level 3.
10. 47 C.F.R. § 61.26(a)(3)(i) states: "Switched exchange access services shall include: (i) The functional equivalent of the ILEC interstate exchange access services typically associated with the following rate elements: carrier common line (originating); carrier common line (terminating); local end office switching; interconnection charge; information surcharge; tandem switched transport termination (fixed); tandem switched transport facility (per mile); tandem switching."
11. Birch operates within, among other areas, the BellSouth region, and within the BellSouth region, BellSouth (n/k/a AT&T) is the "competing ILEC" as that term is defined in 47 C.F.R. § 61.26(a)(2).
 - a. The competing ILEC in this case is BellSouth.
 - b. Birch only assesses the PICC in the BellSouth region.
12. Since at least February 2015, the rates Birch has assessed CenturyLink and Level 3 pursuant to Section 5 of the Birch FCC Tariff for the BellSouth region have consisted of the "single per minute rate found in Section 5.4.3A, Local Switching" for the "AT&T (former BellSouth) areas," as stated in Section 5 of the Birch FCC Tariff.
13. For purposes of this case, BellSouth charges the following rate categories from the BellSouth Telecommunications, LLC Tariff F.C.C. No. 1, Access Service (the "BellSouth FCC Tariff"): (a) Local Switching Usage Sensitive Rates (Section 6.8.2(A)(1)); (b) Common Trunk Port Service per each common transport trunk termination per access MOU (Section 6.8.2(A)(2)); (c) the Zone 1 per access minute of use Facility Termination charge (Section 6.8.1(B)(2)); (d) the Zone 1 per access minute of use, per mile charge (Section 6.8.1(B)(2)); (e) the DS3 to DS 1 Multiplexer per access minute of use charge (Section 6.8.1(B)(2)(a)); (f) the Zone 1 per access minute of use Access Tandem Switching charge (Section 6.8.1(C)(1)); (g) the Carrier Common Line Access Charges Premium Access per access minute (Section 3.9.1); and (h) the Information Surcharge charge premium rate per 100 access minutes (Section 6.8.4) ("BellSouth Composite Rate").
14. Since at least February 2015, the BellSouth FCC Tariff has not included a PICC.

15. Since at least February 2015, Birch's rates pursuant to Section 5 of the Birch FCC Tariff for the BellSouth region as set forth in Paragraph 12 have been equal to BellSouth Composite Rate set forth in Paragraph 13.
16. In addition to the rates contained in Section 5.4.3A of the Birch FCC Tariff, pursuant to Section 6.3 of the Birch FCC Tariff, Birch separately assesses CenturyLink and Level 3 a flat-rate \$2.50 monthly PICC per-line or per-trunk for each presubscribed local exchange service line or trunk of a multiline business customer in the 9-state BellSouth region for whom CenturyLink or Level 3 is the presubscribed interexchange carrier.
17. If the Birch PICC were included in the calculation of the Birch switched exchange access service charge for the BellSouth region, the Birch switched exchange access service charge would exceed the benchmark rate by the amount of the PICC.
18. The attached month-by-month tables (one for CenturyLink and one for Level 3) reflect the total PICC charges that Birch assessed, the total PICC charges Complainants paid, and the total late payment charges Birch assessed (if any) during defined periods of time.



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Communications, Inc.*

Dated: March 22, 2018

Exhibit A
Attachment 1

CONFIDENTIAL MATERIALS OMITTED

Exhibit A – Attachment 1

Month-by-month tables for CenturyLink and Level 3 reflecting the total PICC charges that Birch assessed, the total PICC charges paid by CenturyLink and Level 3, and the total late payment charges Birch assessed during the defined time periods

Exhibit B



CenturyLink™

Timothy M. Boucher
Suite 250
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Phone 303-992-5751
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Associate General Counsel

March 7, 2017

REDACTED – FOR PUBLIC INSPECTION

VIA COURIER

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

VIA COURIER & ELECTRONIC MAIL

Rosemary McEnery
Acting Chief, Market Disputes Resolution Division
Enforcement Bureau
Federal Communications Commission
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Rosemary.McEnery@fcc.gov

**RE: *Informal Complaint by CenturyLink Communications, LLC v. Birch
Communications/Access Integrated Networks and Request for Mediation***

Dear Ms. McEnery:

Pursuant to 47 C.F.R. § 1.716, *et seq.*, CenturyLink Communications, LLC (CenturyLink) brings this informal complaint against Birch Communications/Access Integrated Networks (AIN).

CenturyLink believes that confidential mediation may be helpful in resolving this dispute and, therefore, also suggests that the parties schedule a Commission-sponsored mediation as soon as possible.

I. SUMMARY OF COMPLAINT

As described more fully below, AIN is and has been imposing interstate and intrastate switched access charges in violation of the Commission's CLEC benchmark rule set forth in Section 47 C.F.R. § 61.26 of the Commission's rules and other Commission rules and precedents.

CenturyLink has attempted to resolve this matter without need of a complaint proceeding, but AIN has rejected CenturyLink's efforts.

Through this complaint, CenturyLink respectfully requests that the Commission:

- (1) Issue an order requiring AIN to reduce its interstate and intrastate switched access charges to comply with the Commission's CLEC benchmark rule and other Commission rules and precedents and directing AIN to charge lawful switched access rates to CenturyLink going forward.
- (2) Award CenturyLink damages to which it is legally entitled and in accordance with Section 206 of the Communications Act to compensate CenturyLink for the unlawful interstate switched access charges assessed by AIN – together with interest and attorneys fees

II. CONDUCT AT ISSUE

A. The Commission's CLEC Benchmark Rule

The Commission's CLEC benchmark rule prohibits a CLEC from charging rates for the CLEC's switched exchange access services that exceed the rate charged for similar services by the competing ILEC.¹

Moreover, the Commission has made clear that, when applying the CLEC benchmark rule, the relevant reference points are the CLEC's composite rate and the competing ILEC's composite rate.² In this context, composite rate equals the total amount billed for a given period divided by the minutes of use - with flat rated elements or per mile charges translated into a per minute rate for purposes of this analysis.³ The Commission has emphasized that it did not intend to "restrict CLECs to tariffing solely the per-minute rate that a particular ILEC charges for its switched, interstate access service."⁴ Instead, it intended to prevent CLECs from receiving revenues exceeding, "those the ILECs receive *from IXCs*, whether they are expressed as per minute or flat-rate charges."⁵ And, it has stated that the "benchmark rate for CLEC switched access does not require any particular rate elements or rate structure; for example, it does not

¹ 47 C.F.R. § 61.26(c).

² See e.g. *Seventh Report & Order, In re Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, CC Docket No. 96-262, 16 FCC Rcd 9923 ¶ 47, n.109 (2001) ("*Seventh Report & Order*").

³ *Id.*

⁴ *Id.* ¶ 54.

⁵ *Id.* (emphasis in original).

dictate whether a CLEC must use flat-rate charges or per-minute charges, so long as the composite rate does not exceed the benchmark.”⁶

The Commission has also made expressly clear that the presubscribed interexchange carrier charge (PICC), to the extent that it survives in carrier rate structures, falls within the CLEC benchmark rule.⁷

The Commission subsequently confirmed this when it expressly clarified that PICCs are included in the definition of a core switched access functionality for purposes of the ongoing *Transformation Order*⁸ ICC transition - “End Office Access Service.”⁹

And, in its more recent declaratory ruling addressing the VoIP symmetry issue, the Commission once again clarified that common line charges such as the PICC are subject to the CLEC benchmark rule.¹⁰

Additionally, the FCC’s orders make clear that LEC database query charges are subject to the CLEC benchmark. In the *Seventh Report & Order*, the Commission specified that the CLEC benchmark applies to *all* services that comprise the CLEC’s interstate switched access service, and “applies, but is not necessarily limited, to” any specific rate elements.¹¹ It also made clear that it was specifically addressing access charges for toll-free traffic in its new framework – i.e. it was applying the ILEC benchmark limitation to tariffs for both originating and terminating

⁶ *Id.* ¶ 55.

⁷ *Id.* ¶ 54.

⁸ *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform - Mobility Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 FCC Rcd 17663 (2011) (*Transformation Order*) (subsequent regulatory history omitted), *aff’d sub nom.*, *In re: FCC 11-161*, Nos. 11-9900, *et al.*, 753 F.3d 1015 (10th Cir. 2014), *petitions for rehearing en banc denied*, Orders, Aug. 27, 2014, *cert. denied*, 135 S. Ct. 2072, May 4, 2015 (Nos. 14-610, *et al.*).

⁹ 47 C.F.R. § 51.903(d).

¹⁰ *Connect America Fund Developing a Unified Intercarrier Compensation Regime*, 30 FCC Rcd. 1587, ¶ 8, n. 27 (2015) (“Except in the limited circumstances where a PICC or CCL is being charged, there is no danger that competitive LECs would be recovering these costs through benchmarked access charges.”)

¹¹ *Seventh Report & Order* ¶ 55 and n.126.

access charges for toll-free.¹² It did decline a request by certain carriers to require CLEC toll-free database query charges, which are an individual rate element of toll free access charges, to match the rate of the competing ILECs based on a lack of evidence in the record at the time. However, in doing so, it made clear that it expected “that CLECs will not look to this category of tariffed charges to make up for access revenues that the benchmark system denies them.”¹³ Moreover, the FCC did not exclude toll-free database query charges from the mix of rate elements comprising the aggregate charge for switched access services subject to the benchmark. And, thereafter, when the Commission further refined its benchmark rules in a subsequent *Eighth Report & Order* on access charge reform, it once again made clear that CLEC “access rates for 8YY traffic must be at or below the benchmark”.¹⁴

B. AIN’s Conduct In Violation of the CLEC Benchmark Rule

Applying this legal authority to AIN’s switched access billing to CenturyLink, it is clear that AIN’s charges have been excessive and unlawful.

Even excluding AIN’s PICC and 8XX database charges from the equation, AIN’s composite rate for switched access billed to CenturyLink has exceeded the benchmark ILEC’s (Bell South’s) composite rate. Column B of the spreadsheet attached as an **Appendix** hereto estimates these overcharges, which total **[BEGIN CONFIDENTIAL]** **[REDACTED]** **END CONFIDENTIAL]** for the time period July 2012 to the present.

Factoring AIN’s interstate PICC charges into the equation as well, AIN’s composite rate for switched access billed to CenturyLink has exceeded the benchmark ILEC’s (Bell South’s) composite rate. These overcharges are in the estimated range of the amounts reflected in Column C of the **Appendix** – totaling **[BEGIN CONFIDENTIAL]** **[REDACTED]** **[END CONFIDENTIAL]** for the time period July 2010 to the present. CenturyLink notes that this estimate is the most conservative estimate it sees at this time and it is possible that this estimate understates this component of overcharges by 10% or more (as it is based on a potentially conservative estimate of the impact of the PICC).¹⁵

¹² *Id.* ¶ 56.

¹³ *Id.* ¶ 56 and n.128.

¹⁴ Eighth Report & Order, *In re Access Charge Reform*, CC Docket No. 96-262, FCC 04-110, 19 FCC Rcd 9108 ¶ 71 (2004) (“*Eighth Report & Order*”).

¹⁵ This does not include an additional amount of intrastate overcharges (estimated at less than **[BEGIN CONFIDENTIAL]** **[REDACTED]** **[END CONFIDENTIAL]** for the time period July 2012 to the present) resulting from the fact that AIN’s intrastate composite rate for switched access billed to CenturyLink has exceeded the benchmark ILEC’s (Bell South’s) composite intrastate rate. While the FCC’s CLEC benchmark rule, 47 C.F.R. § 61.26, only applies directly to interstate switched access charges, the Commission’s rules further impose the post-*Transformation Order* intrastate/interstate parity obligations on CLEC intrastate access charges. See 47 C.F.R. § 51.911. As a result, AIN’s excessive intrastate switched access billing to

Factoring AIN's 8XX database charges into the equation, AIN's composite rate for switched access billed to CenturyLink has exceeded the benchmark ILEC's (Bell South's) composite rate by the additional estimated amounts reflected in Column D of the **Appendix** – totaling [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] for the time period July 2012 to the present.¹⁶

C. CenturyLink's Entitlement To Damages In This Case

In its communications with CenturyLink to-date, AIN has failed to refute CenturyLink's contentions in any credible way. Indeed, its only response to CenturyLink's core contentions that AIN's charges violate the Commission's CLEC benchmark rule appears to be that its charges are reflected in its FCC tariff and therefore the deemed lawful doctrine somehow protects it from damages. However, a review of AIN's tariff and related tariff filings indicates that the relevant provisions were not filed in a manner that would entitle it to deemed lawful treatment. And, regardless, the Commission has made abundantly clear that a CLEC is prohibited from filing a tariff with rates above the CLEC benchmark and that doing so violates the Commission's rules and renders the prohibited tariff *void ab initio*.¹⁷

CenturyLink is also unlawful under the Commission's rules and, thus, compensable with damages in this proceeding.

¹⁶ AIN's switched access billing to CenturyLink during this time period also appear to be unlawful for the independent reason that it has applied PICC charges to single line business users when the Commission prohibits that practice and only permits the application of PICC charges to multiline business users. While CenturyLink has confirmed that AIN has applied PICC charges to single line business users, CenturyLink cannot, at this time, determine what portion of the lines at issue might be multi-line versus single line. Only AIN can do that. In response to these contentions, AIN has stated that it has determined that only ---- out of ---- lines at issue are single line. However, CenturyLink conducted partial sampling of just 50 lines that indicated that 10 of those lines alone were single line. At this time, CenturyLink is unable to determine exactly how many of the subject lines are single line. However, Column E of the **Appendix** provides a way to estimate the potential order of magnitude of the overcharges at issue on this independent claim. It demonstrates that AIN's PICC charges on the relevant lines have totaled approximately [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] for the time period July 2010 to the present. Therefore, even if just 20% of these lines were in fact single lines, the potential overcharges would be approximately \$1.5 million.

¹⁷ *AT&T Services Inc. and AT&T Corp., Complainants, v. Great Lakes Comnet, Inc. and Westphalia Telephone Company, Defendants*, EB Docket No. 14-22, 30 FCC Rcd 2586, ¶¶ 28-29 (2015).

D. Relief Sought

As explained above, AIN's conduct violates the Commission's CLEC benchmark rule set forth in Section 47 C.F.R. § 61.26 of the Commission's rules and other Commission rules and precedents. It therefore also constitutes an unreasonable practice in violation of Section 201(b) of the Communications Act. The Commission also has authority to address this conduct in the manner requested under Sections 203 through 208 of the Communications Act. Accordingly, the Commission should find that AIN's conduct is unreasonable and unlawful.

CenturyLink respectfully requests that the Commission:

- (1) Issue an order requiring AIN to reduce its interstate and intrastate switched access charges to comply with the Commission's CLEC benchmark rule and other Commission rules and precedents and directing AIN to charge lawful switched access rates to CenturyLink going forward.
- (2) Award CenturyLink damages to which it is legally entitled and in accordance with Section 206 of the Communications Act to compensate CenturyLink for the unlawful interstate switched access charges assessed by AIN – together with interest and attorneys fees.

Sincerely,

/s/ Timothy M. Boucher

Appendices Attached

cc:

Lisa Saks, Enforcement Bureau, FCC
Birch Communications D.C. Agent for Service of Process
Corporation Service Company
1090 Vermont Avenue, N.W.
Washington, DC 20005
mlatsko@cscinfo.com
Greg Darnell, Director, Birch Communications (via email)

REDACTED – FOR PUBLIC INSPECTION

REDACTED -- FOR PUBLIC INSPECTION

03/07/17 Informal Complaint by CenturyLink Communications, LLC v. Birch Communications/Access Integrated Networks and Request for Mediation -- Appendix

| BILL MONTH | USAGE BENCHMARK | USG+PICC / MOU LESS BS | 8XX DB BENCHMARK | PICC EXPENSE |
|-------------------|------------------------|-------------------------------|-------------------------|---------------------|
| Jul-10 | | | | |
| Aug-10 | | | | |
| Sep-10 | | | | |
| Oct-10 | | | | |
| Nov-10 | | | | |
| Dec-10 | | | | |
| Jan-11 | | | | |
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Nov-16
Dec-16
Jan-17
Feb-17

TOTAL (COLUMN C/D
7/2010)

TOTAL BACK TO 12/2014

REDACTED -- FOR PUBLIC INSPECTION

**03/07/17 Informal Complaint by CenturyLink Communications, LLC v. Birch
Communications/Access Integrated Networks and Request for Mediation -- Appendix**

ORIGINATING & TERMINATING INTERSTATE BIRCH USAGE BILLED+PICC/MOU = BIRCH CPM

| BILL DATE | YEAR | MONTH | JUR | ORIG MOU | TERM MOU | ORIG COST | TERM COST | TOTAL MOU |
|-----------|------|-------|----------|----------|----------|-----------|-----------|-----------|
| 7/8/2010 | 2010 | | 7 INTER | | | | | |
| 8/8/2010 | 2010 | | 8 INTER | | | | | |
| 9/8/2010 | 2010 | | 9 INTER | | | | | |
| 10/8/2010 | 2010 | | 10 INTER | | | | | |
| 11/8/2010 | 2010 | | 11 INTER | | | | | |
| 12/8/2010 | 2010 | | 12 INTER | | | | | |
| 1/8/2011 | 2011 | | 1 INTER | | | | | |
| 2/8/2011 | 2011 | | 2 INTER | | | | | |
| 3/8/2011 | 2011 | | 3 INTER | | | | | |
| 4/8/2011 | 2011 | | 4 INTER | | | | | |
| 5/8/2011 | 2011 | | 5 INTER | | | | | |
| 6/8/2011 | 2011 | | 6 INTER | | | | | |
| 7/8/2011 | 2011 | | 7 INTER | | | | | |
| 8/8/2011 | 2011 | | 8 INTER | | | | | |
| 9/8/2011 | 2011 | | 9 INTER | | | | | |
| 10/8/2011 | 2011 | | 10 INTER | | | | | |
| 11/8/2011 | 2011 | | 11 INTER | | | | | |
| 12/8/2011 | 2011 | | 12 INTER | | | | | |
| 1/8/2012 | 2012 | | 1 INTER | | | | | |
| 2/8/2012 | 2012 | | 2 INTER | | | | | |
| 3/8/2012 | 2012 | | 3 INTER | | | | | |
| 4/8/2012 | 2012 | | 4 INTER | | | | | |
| 5/8/2012 | 2012 | | 5 INTER | | | | | |
| 6/8/2012 | 2012 | | 6 INTER | | | | | |
| 7/8/2012 | 2012 | | 7 INTER | | | | | |
| 8/8/2012 | 2012 | | 8 INTER | | | | | |
| 9/8/2012 | 2012 | | 9 INTER | | | | | |
| 10/8/2012 | 2012 | | 10 INTER | | | | | |
| 11/8/2012 | 2012 | | 11 INTER | | | | | |
| 12/8/2012 | 2012 | | 12 INTER | | | | | |
| 1/8/2013 | 2013 | | 1 INTER | | | | | |
| 2/8/2013 | 2013 | | 2 INTER | | | | | |
| 3/8/2013 | 2013 | | 3 INTER | | | | | |
| 4/8/2013 | 2013 | | 4 INTER | | | | | |
| 5/8/2013 | 2013 | | 5 INTER | | | | | |
| 6/8/2013 | 2013 | | 6 INTER | | | | | |
| 7/8/2013 | 2013 | | 7 INTER | | | | | |
| 8/8/2013 | 2013 | | 8 INTER | | | | | |

| | | |
|-----------|------|----------|
| 9/8/2013 | 2013 | 9 INTER |
| 10/8/2013 | 2013 | 10 INTER |
| 11/8/2013 | 2013 | 11 INTER |
| 12/8/2013 | 2013 | 12 INTER |
| 1/8/2014 | 2014 | 1 INTER |
| 2/8/2014 | 2014 | 2 INTER |
| 3/8/2014 | 2014 | 3 INTER |
| 4/8/2014 | 2014 | 4 INTER |
| 5/8/2014 | 2014 | 5 INTER |
| 6/8/2014 | 2014 | 6 INTER |
| 7/8/2014 | 2014 | 7 INTER |
| 8/8/2014 | 2014 | 8 INTER |
| 9/8/2014 | 2014 | 9 INTER |
| 10/8/2014 | 2014 | 10 INTER |
| 11/8/2014 | 2014 | 11 INTER |
| 12/8/2014 | 2014 | 12 INTER |
| 1/8/2015 | 2015 | 1 INTER |
| 2/8/2015 | 2015 | 2 INTER |
| 3/8/2015 | 2015 | 3 INTER |
| 4/8/2015 | 2015 | 4 INTER |
| 5/8/2015 | 2015 | 5 INTER |
| 6/8/2015 | 2015 | 6 INTER |
| 7/8/2015 | 2015 | 7 INTER |
| 8/8/2015 | 2015 | 8 INTER |
| 9/8/2015 | 2015 | 9 INTER |
| 10/8/2015 | 2015 | 10 INTER |
| 11/8/2015 | 2015 | 11 INTER |
| 12/8/2015 | 2015 | 12 INTER |
| 1/8/2016 | 2016 | 1 INTER |
| 2/8/2016 | 2016 | 2 INTER |
| 3/8/2016 | 2016 | 3 INTER |
| 4/8/2016 | 2016 | 4 INTER |
| 5/8/2016 | 2016 | 5 INTER |
| 6/8/2016 | 2016 | 6 INTER |
| 7/8/2016 | 2016 | 7 INTER |
| 8/8/2016 | 2016 | 8 INTER |
| 9/8/2016 | 2016 | 9 INTER |
| 10/8/2016 | 2016 | 10 INTER |
| 11/8/2016 | 2016 | 11 INTER |
| 12/8/2016 | 2016 | 12 INTER |
| 1/8/2017 | 2017 | 1 INTER |
| 2/8/2017 | 2017 | 2 INTER |

| TOTAL MOU COST | PICC COST | TOTAL COST | BIRCH CPM | BS ORIG CPM | BS TERM CPM | COST S/B | DISPUTE |
|----------------|-----------|------------|-----------|-------------|-------------|----------|---------|
|----------------|-----------|------------|-----------|-------------|-------------|----------|---------|

Exhibit C

**Before the
Federal Communications Commission
Washington, DC 20554**

| | | |
|-------------------------------------|---|-----------------------|
| In the Matter of |) | |
| |) | |
| CenturyLink Communications, LLC and |) | File No. EB-18-MD-002 |
| Level 3 Communications, LLC |) | |
| |) | |
| Complainants, |) | |
| |) | |
| v. |) | |
| |) | |
| Birch Communications, Inc., |) | |
| |) | |
| Defendant. |) | |

AFFIDAVIT OF MARTIN J. ESTEVAO

State of Colorado

Denver County

I, Martin J. Estevao, having been duly sworn, state the following upon personal knowledge:

1. I am a citizen of the United States of America and I reside in the State of Colorado.
2. I am over the age of eighteen years.
3. I am an attorney with the law firm of Armstrong Teasdale LLP. I represent CenturyLink Communications, LLC ("CenturyLink") and Level 3 Communications, LLC ("Level 3") in this Formal Complaint proceeding.
4. Attached to the Formal Complaint as Exhibit B is a true and correct copy of the redacted version of CenturyLink's Informal Complaint against Birch Communications, Inc. ("Birch"), entitled "*Informal Complaint by CenturyLink Communications, LLC v. Birch Communications/Access Integrated Networks and Request for Mediation*" (March 7, 2017).
5. Attached to the Formal Complaint as Exhibit D is a true and correct copy of Birch's response to CenturyLink's Informal Complaint, entitled "Re: EB-17-MDIC-0001, CenturyLink Communications, LLC v. Birch Communications, Inc." (September 28, 2017).

6. Attached to the Formal Complaint as Exhibit E is a true and correct copy of Birch's Complaint against CenturyLink filed in the United States District Court for the District of Delaware, *Birch Communications, Inc. v. CenturyLink Communications, LLC*, No. 17-1367-JEJ.
7. Attached to the Formal Complaint as Exhibit F is a true and correct copy of the Court's Order Granting Unopposed Motion to Stay Proceedings Pursuant to Doctrine of Primary Jurisdiction, *Birch Communications, Inc. v. CenturyLink Communications, LLC*, No. 17-1367-JEJ.
8. Attached to the Formal Complaint as Exhibit G is a true and correct copy of the March 5, 2018 certified letter delivered to Birch's counsel and registered agents, entitled "CenturyLink Communications, LLC and Level 3 Communications, LLC v. Birch Communications, Inc."
9. Attached to the Formal Complaint as Exhibit H is a true and correct copy of Birch's March 9, 2018 response to the certified letter sent by CenturyLink and Level 3 to Birch's counsel and registered agents, entitled "CenturyLink Communications, LLC and Level 3 Communications, LLC v. Birch Communications, Inc."
10. Attached to the Formal Complaint as Exhibit I are true and correct copies of the cover page, Section 5, and Section 6 of Birch's Communications Access Services Tariff, Tariff FCC No. 1.
11. Attached to the Formal Complaint as Exhibits J, K, L, and M are true and correct copies of Birch's tariff rate sheets for Sections 5 and Sections 6 of Birch's Communications Access Services Tariff, Tariff FCC No. 1, from 2014, 2015, 2016, and 2017, respectively.
12. Attached to the Formal Complaint as Exhibit O is a true and correct copy of CenturyLink's January 6, 2017 dispute notice challenging Birch's aggregate switched access charges, entitled "Re: CenturyLink Dispute of Birch Communications/Access Integrated Networks Switched Access Charges." This document is confidential in its entirety.
13. Attached to the Formal Complaint as Exhibits P, Q, R, and S are true and correct copies of the cover pages and the following provisions of Section 6 of the BellSouth interstate access tariff from 2014, 2015, 2016, and 2017, respectively: (a) Local Switching Usage Sensitive Rates (Section 6.8.2(A)(1)); (b) Common Trunk Port Service per each common transport trunk termination per access MOU (Section 6.8.2(A)(2)); (c) the Zone 1 per access minute of use Facility Termination charge (Section 6.8.1(B)(2)); (d) the Zone 1 per access minute of use, per mile charge (Section 6.8.1(B)(2)); (e) the DS3 to DS 1 Multiplexer per access minute

of use charge (Section 6.8.1(B)(2)(a)); (f) the Zone 1 per access minute of use Access Tandem Switching charge (Section 6.8.1(C)(1)); (g) the Carrier Common Line Access Charges Premium Access per access minute (Section 3.9.1); and (h) the Information Surcharge charge premium rate per 100 access minutes (Section 6.8.4).

THE STATEMENTS MADE IN THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Dated this 22nd day of March, 2018



Martin J. Estevao

The above and foregoing Affidavit was subscribed and sworn to or affirmed by Martin J. Estevao before me this 22 day of March, 2018.



Notary Public

My commission expires: 11/16/2021



Exhibit D

CAHILL GORDON & REINDEL LLP
EIGHTY PINE STREET
NEW YORK, NY 10005-1702

L. HOWARD ADAMS
ROBERT A. ALESSI
HELENE R. BANKS
ANIRUDH BANSAL
DAVID L. BARASH
LANDIS C. BEST
BRADLEY J. BONDI
BROCKTON B. BOSSON
KEVIN J. BURKE
JAMES J. CLARK
SEAN M. DAVIS
STUART G. DOWNING
ADAM M. DWORKIN
ANASTASIA EFIMOVA
JENNIFER B. EZRING
JOAN MURTAGH FRANKEL
JONATHAN J. FRANKEL
PIERRE M. GENTIN

CHARLES A. GILMAN
ARIEL GOLDMAN
JASON M. HALL
WILLIAM M. HARTNETT
CRAIG M. HOROWITZ
DOUGLAS S. HOROWITZ
TIMOTHY B. HOWELL
DAVID G. JANUSZEWSKI
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*ADMITTED IN DC ONLY

September 28, 2017

Via Hand Delivery (to Secretary's Office)
and Electronic Mail (to Commission staff)

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

ATTN: Lisa J. Saks, Assistant Chief
Erin Boone, Attorney Advisor
Market Disputes Resolution Division
Enforcement Bureau

Re: EB-17-MDIC-0001
CenturyLink Communications, LLC v. Birch Communications, Inc.

Dear Ms. Saks and Ms. Boone:

Birch Communications, Inc. ("Birch" or the "Company"),¹ by its attorneys, respectfully submits this response to the Informal Complaint filed by CenturyLink Communications, LLC

¹ In 2008, Birch Telecom, Inc. merged with Access Integrated Networks, Inc., and the surviving entity subsequently changed its name to Birch Communications, Inc. The Complaint and CenturyLink's prior correspondence to Birch mistakenly references "Access Integrated Networks" or "AIN" and the Access Integrated Networks Tariff FCC No. 3. The appropriate tariff governing this dispute is the Access Services Tariff of Birch Communications, Tariff FCC No. 1, which replaced in its entirety Access Integrated Networks Tariff FCC No. 3 in October 2008.

(“CenturyLink”) dated March 7, 2017 (“Complaint”). Birch refuses to satisfy CenturyLink’s informal Complaint because the Birch charges for services provided to CenturyLink are lawful.²

PRELIMINARY STATEMENT

The true aggrieved party here is Birch, not CenturyLink.³ CenturyLink unilaterally has been “short paying” Birch’s invoices rather than paying the lawfully tariffed rates reflected in Birch’s access service tariff on file with the Commission (“Birch FCC Access Tariff”)⁴ for interstate switched access services and toll-free database query charges, and has stopped paying Birch’s presubscribed interexchange carrier charge (“PICC”) invoices altogether. Such self-help is not permissible.⁵ CenturyLink is required to “first pay, under protest, the amount allegedly due and then seek redress.”⁶

Over 97.5% of the monetary relief sought by CenturyLink in its Complaint pertains to the PICC set forth in the Birch FCC Access Tariff. Under the Commission’s regulations and orders, confirmed by market practice, the PICC is separate from and not included in the benchmark interstate switched exchange access service rate under 47 C.F.R. § 61.26(c). The Birch PICC has been determined in accordance with the Commission’s regulation specifically pertaining to the

² 47 C.F.R. § 1.717.

³ CenturyLink’s claim that Birch has “rejected CenturyLink’s efforts” to resolve the parties’ dispute (Complaint at 2) is untrue. The parties have engaged in numerous conversations over the past years with a continuous exchange of correspondence in 2015 that led to a Birch proposal to resolve the ongoing billing disputes over the remote/host additive and the 8YY database query charges being sent in February 2016. Birch did not hear back from CenturyLink again until January 2017 (other than receipt of the monthly bill disputes for the remote/host additive and 8YY database query charges). The paper trail does not support CenturyLink’s assertion.

⁴ Birch Communications Access Services Tariff, Tariff FCC No. 1 (eff. October 24, 2008) (“Birch FCC Access Tariff”).

⁵ *NOS Communications, Inc., Complainant v. American Telephone and Telegraph Company, Defendant*, 7 FCC Rcd 7889, ¶ 2 (1992) (party “is not entitled to the self-help measure of withholding payment for tariffed services duly performed”).

⁶ *NOS Communications* ¶ 2; see also *Connect America Fund*, 26 FCC Rcd 17663, ¶ 700 (2011) (subsequent history omitted); *MCI Telecommunications Corporation*, 62 F.C.C. 2d 703 (1976) (finding a customer may not withhold payment of properly billed tariffed charges for voluntarily ordered services).

PICC,⁷ and CenturyLink does not challenge that the Birch PICC complies with this provision. Accordingly, the Birch PICCs invoiced to CenturyLink were appropriate. Moreover, were there any ambiguity as to whether the PICC is required to be included in the benchmark rate, CenturyLink's Complaint would present an issue of first impression, and the question should be resolved on an industry-wide basis in a formal rulemaking or declaratory ruling proceeding after notice and comment.

Similarly, longstanding precedent establishes that toll-free or 8YY database query charges also are separate from and not included in the benchmark rate and are not capped by the rate established by the competing incumbent local exchange carrier ("ILEC"). CenturyLink has implicitly acknowledged this in numerous pleadings before the Commission.⁸ CenturyLink is not entitled to the relief sought regarding such charges; and any review undertaken of such charges should be determined in the context of a rulemaking or declaratory ruling pertaining to the entire industry after notice and comment, not in resolving an isolated informal complaint. CenturyLink does not claim that Birch's toll-free database query charges in and of themselves are excessive.

CenturyLink also is not entitled to any relief with respect to Birch's interstate switched access service rates because these rates are deemed lawful as reflected in the Birch FCC Access Tariff. Moreover, Birch's interstate switched access service rates have been appropriately determined using a methodology acknowledged by the Commission and used throughout the competitive local exchange carrier ("CLEC") industry.

⁷ 47 C.F.R. § 69.153(a).

⁸ See, e.g., WC Docket No. 16-363, Opposition/Comments of CenturyLink, Inc. at 5 (filed December 2, 2016); WC Docket Nos. 10-90, 07-135, Comments of CenturyLink at 5-6 (filed July 31, 2017).

CenturyLink has not met its burden of proof. A complaint that does not provide sufficient information to permit the defendant to respond to the allegation fails to comply with the Commission's complaint rules.⁹ The standard of review in a complaint proceeding is clear:

in order to prevail, the complainant must demonstrate by a preponderance of the evidence that the alleged violation of the Act or the Commission's rules actually occurred. In other words, a complainant must provide facts, which if true, are sufficient to constitute a violation of the Act or of a Commission rule or orders, and such facts must be persuasively supported by affidavit or other relevant documentation.¹⁰

CenturyLink has made no such showing here.

Assuming for the sake of argument that CenturyLink were entitled to any monetary relief, such relief would be subject to the applicable two year statute of limitations set forth in the Act.¹¹ Moreover, as respects the PICC, CenturyLink first challenged these charges in a letter dated January 6, 2017.

PICC

CenturyLink challenges Birch's charging the PICC in addition to the benchmark switched access service rate under 47 C.F.R. § 61.26(c).¹² Birch's PICC is \$2.50 per line for multi-line businesses,¹³ and the charge has been included in the Birch FCC Access Tariff since at least 2008.

⁹ See, e.g., *Radiofone, Inc., Complainant v. BellSouth Mobility, Inc., Defendant*, 14 FCC Rcd 6088, n.87 (1999) ("By its failure to provide sufficient information to permit the defendant to respond to this allegation, Radiofone has failed to comply with Section 1.720(a), 1.721(a)(5) and 1.721(b)(3) of the Commission's Rules."); see also 47 C.F.R. § 1.716 (informal complaints must provide "a complete statement of the facts"); § 1.720(a) (formal complaints "must be clear, concise, and explicit" and "should be pleaded fully and with specificity"); § 1.722(h) (when "recovery of damages is sought, it shall be the responsibility of the complainant to include . . . evidence to be used by the complainant to determine the amount of such damages").

¹⁰ *Consumer.Net, Complainant v. AT&T Corp., Defendant*, 15 FCC Rcd 281, ¶ 6 (1999); see also *Contel of the South, Inc., et al. v. Operator Communications, Inc.*, 23 FCC Rcd 548, ¶ 10 (2008).

¹¹ 47 U.S.C. § 415.

¹² Complaint at 2-4.

¹³ Birch FCC Access Tariff section 6.3.

While 47 C.F.R. § 61.26(c) does not enumerate the charges to be included/excluded in the benchmark as respects “switched exchange access services” and “similar services,” the Commission in its *2001 Access Charge Order*¹⁴ addressed the issue. In the text, the Commission stated:

Using traditional ILEC nomenclature, it appears that most CLECs seek compensation for the same basic elements, however precisely named: (1) common line charges; (2) local switching; and (3) transport. The only requirement is that the aggregate charge for these services, however described in their tariffs, cannot exceed our benchmark.¹⁵

In a footnote to the above text, the Commission enumerated with greater specificity the rate elements to be considered in the benchmark:

Thus, the safe harbor rate applies, but is not necessarily limited, to the following specific rate elements and their equivalents: carrier common line (originating); carrier common line (terminating); local end office switching; interconnection charge; information surcharge; tandem switched transport termination (fixed); tandem switched transport facility (per mile); tandem switching.¹⁶

Thus, the question is whether the absence of any reference to the PICC in the above-quoted sentences was intentional and meant to exclude them from the benchmark or whether the PICC was intended to be included in the benchmark and is subsumed by the explicitly referenced rate elements.

Birch respectfully submits that it is the former. The immediately preceding paragraph of the *2001 Access Charge Order* specifically and explicitly addressed the PICC:

For example, CLECs shall be permitted to set their tariffed rates so that they receive revenues equivalent to those that the ILECs receive through the presubscribed interexchange carrier charge (PICC), to the extent that it survives in the wake of our *CALLS Order*.¹⁷

¹⁴ *Access Charge Reform*, 16 FCC Rcd 9923 (2001) (“*2001 Access Charge Order*”).

¹⁵ *2001 Access Charge Order* ¶ 55 (footnote omitted).

¹⁶ *2001 Access Charge Order* ¶ 55, n.126.

¹⁷ *2001 Access Charge Order* ¶ 54 (footnote omitted). The PICC did survive the *CALLS Order*. See, e.g.,

Having explicitly addressed recovery of the PICC in paragraph 54 of the *2001 Access Charge Order*, if the Commission had intended that this charge be included in the benchmark discussed in paragraph 55 of the *2001 Access Charge Order*, one would have expected that it would have been explicitly identified in the enumeration of included rate elements. In the absence of such identification, the inference which should be drawn is that the PICC is separate from the benchmark. The fact that such charges are separately regulated supports this inference. Specifically, 47 C.F.R. § 69.153(a) provides:

§ 69.153 Presubscribed interexchange carrier charge (PICC).

A charge expressed in dollars and cents per line may be assessed upon the Multi-line business subscriber's presubscribed interexchange carrier to recover revenues totaling the Average Price Cap CMT Revenues per Line month times the number of base period lines less revenues recovered through the End User Common Line charge established under § 69.152 and Interstate Access Universal Service Support Per Line (as defined in § 54.807 of this chapter) multiplied by base period lines for the applicable customer class and zones receiving such support, up to a maximum of \$4.31 per line per month.

Thus, the PICC should be tariffed under the constraints enumerated in § 69.153(a), not included in the benchmark established under § 61.26(c).

The above conclusion is supported by sound public policy. The Commission repeatedly has stated in the context of the PICC that one of its goals is to permit carriers to recover their costs in a manner that reflects the way in which they are incurred.¹⁸ The Commission, therefore,

Connect America Fund, et al., 26 FCC Rcd 4554, n.370 (2011) (stating that the *CALLS Order* permitted carriers to recover revenues through two charges paid by interexchange carriers, one of which was “the multiline business presubscribed interexchange carrier charge (MLB PICC) -- a flat per-line charge assessed on the interexchange carrier to whom the customer is presubscribed,” and that the “Commission capped the MLB PICC at \$4.31 per line per month”).

¹⁸ *Access Charge Reform*, 12 FCC Rcd 16606, ¶ 16 (1997) (“1997 Access Charge Order”) (“One of the primary goals of our *First Report and Order* was to develop a cost-recovery mechanism that permits carriers to recover costs in a manner that reflects the way in which those costs are incurred.”); *Defining Primary Lines*, 14 FCC Rcd 4205, ¶ 7 (1999) (“*Primary Lines*”) (“Under principles of cost-causation, it is most economically efficient for incumbent LECs to recover the costs of providing interstate access in the same way that they incur them. Under such principles, incumbent LECs should recover their traffic-sensitive costs of interstate access through per-minute charges, and should recover their non-traffic-sensitive costs through flat charges.”).

established the PICC as a flat per-line charge, rather than a per-minute charge that varied with usage.¹⁹ Thus, it makes sense that the flat-rate PICC should be excluded from the benchmark per-minute charge cap.²⁰

Market practice is consistent with the foregoing. Birch charges a PICC to its IXC customers in the nine-state BellSouth region, and the PICC has been in the Birch FCC Access Tariff since at least 2008. CenturyLink's objection was raised only in January 2017.²¹ A review of other FCC filed tariffs reflects that CLEC competitors of Birch also include a PICC in their FCC access tariff. If there is to be any change to longstanding industry practice of imposing the PICC separately from benchmark rates, such a change should be adopted industry-wide in a rulemaking or declaratory ruling proceeding after notice and comment, not in response to a single informal complaint.

CenturyLink cites paragraph 54 of the *2001 Access Charge Order* for the proposition that the PICC "to the extent that it survives in carrier rate structures falls within the CLEC benchmark rule."²² Presumably, CenturyLink is referencing the following sentence:

For example, CLECs shall be permitted to set their tariffed rates so that they receive revenues equivalent to those that the ILECs receive through the presubscribed interexchange carrier charge (PICC), to the extent that it survives in the wake of our *CALLS Order*. (footnote omitted)

¹⁹ *1997 Access Charge Order* ¶¶ 5-6 ("To the extent that SLC ceilings prevent price cap LECs from recovering their allowed common line revenues from end users, LECs will recover the shortfall, subject to a maximum charge, through a presubscribed interexchange carrier charge (PICC), a flat, per-line charge assessed on the end-user's presubscribed interexchange carrier. The PICC, which over time will shift revenue recovery from the per-minute CCL charges to a flat-rated charge assessed on IXCs, was designed to allow price cap LECs to recover the difference between revenues collected through the SLCs and the total revenue permitted for the common line basket."); *Primary Lines* ¶ 9 ("the Commission also created the PICC: a flat, per-line charge that price cap LECs may assess on an end user's presubscribed IXC").

²⁰ *1997 Access Charge Order* ¶ 74 ("As a flat-rated charge, the PICC will not artificially suppress demand for interstate toll telecommunications services.").

²¹ Notwithstanding that CenturyLink has been disputing Birch's invoices relating to the remote/host additive and toll-free database query charges since July 2012, CenturyLink first raised its challenge of the Birch PICC in a letter dated January 6, 2017. It is unclear what prompted this belated concern.

²² Complaint at 3.

Neither this sentence nor anything else in paragraph 54 or the footnotes thereto says that the PICC is to be subject to the benchmark under 47 C.F.R. § 61.26(c). The quoted sentence rather should be interpreted with reference to 47 C.F.R. § 69.153(a) (quoted above), which regulates how the rate for the PICC is to be expressed for both ILECs and CLECs on the same (*i.e.*, “equivalent”) basis.

CenturyLink also cites to 47 C.F.R. § 51.903(d) regarding inclusion of the PICC as a residual rate element in the definition of “End Office Access Service.”²³ This regulation, however, does not cite or tie into the benchmark calculation under 47 C.F.R. § 61.26(c). The fact that the Commission decided to permit carriers to recover the PICC in their transition rates for End Office Access Service supports Birch’s position that such charges are permissible.

Finally, CenturyLink in a footnote²⁴ cites to a sentence from a footnote to the Commission’s ruling in *Connect America Fund*: “Except in the limited circumstances where a PICC or CCL is being charged, there is no danger that competitive LECs would be recovering these costs through benchmarked access charges.”²⁵ The issue in that ruling pertained to VoIP symmetry, and the discussion to which the footnote pertained related to the End Office Access Service regulation, 47 C.F.R. § 51.903(d), not to 47 C.F.R. § 61.26(c). The sentence in question is at best ambiguous as to whether, in the “limited” circumstance in which the PICC is being charged, the PICC would be included within or would be in addition to the benchmarked charges. In any event, the Commission’s ruling was vacated and remanded by a federal appeals court in November 2016.²⁶

²³ Complaint at 3.

²⁴ Complaint at 3, n.10.

²⁵ 30 FCC Rcd 1587, ¶ 8, n.27 (2015).

²⁶ *AT&T Corp. v. FCC*, 841 F.3d 1047 (D.C. Cir. 2016).

In another footnote, CenturyLink argues that Birch improperly applied PICCs to single line business users, but concedes that it is “unable to determine exactly how many of the subject lines are single line.”²⁷ CenturyLink bears the burden of proof here,²⁸ but has provided no information regarding the composition of its supposed samples. Thus, its conclusions cannot be verified as to basic accuracy, let alone randomness and statistical significance.

In any event, CenturyLink is simply incorrect in its assertion that Birch has applied the PICC to single line business users. As Birch has explained to CenturyLink, it is the case in many instances that a business account has only one line that is presubscribed to CenturyLink, but the imposition of the PICC nonetheless is appropriate because the account also has other presubscribed lines.²⁹ Also, the imposition of the PICC would be appropriate for a business subscriber who has single lines in each of two or more locations in the relevant telephone company area.³⁰

Putting aside that CenturyLink is not entitled to any relief whatsoever with respect to the PICC, CenturyLink also has failed to substantiate the quantum of relief it is seeking. CenturyLink apparently used some undisclosed methodology to cobble together from BellSouth’s separately tariffed rate elements a composite per minute switched access service rate

²⁷ Complaint at 5, n.16.

²⁸ *North County Communication Corp. v. Cricket Communications, Inc.*, 31 FCC Rcd 10739, ¶ 16 (2016) (the FCC will “examine the preponderance of the evidence in light of the totality of the relevant circumstances to determine whether [CenturyLink] has met its burden”); *Consumer Net v. AT&T Corp.*, 15 FCC Rcd 281, ¶ 6 (1999) (“the complainant must demonstrate by a preponderance of the evidence that the alleged violation of the Act or the Commission’s rules actually occurred”).

²⁹ *Primary Lines* ¶ 28. In response to similar claims raised by CenturyLink in its January 6, 2017 letter, Birch reviewed the CenturyLink telephone numbers and/or lines on which Birch currently assesses a PICC. This review revealed that there were a handful of lines that were single-line accounts requiring an adjustment. This discovery amounts to an insignificant billing error rate, and is by no means an indication of a systemic problem in Birch’s calculation and application of the PICC. In February 2017, Birch rectified this error and applied a credit to CenturyLink’s account to correct the limited and non-material instances in which Birch assessed a PICC on a single-line business user.

³⁰ *Primary Lines* ¶ 29.

for comparison purposes to the composite rate CenturyLink calculated for Birch's charges.³¹ The Complaint does not disclose the methodology used by CenturyLink for the BellSouth calculation (*e.g.*, what components were included/excluded and what assumptions were used regarding actual traffic and actual mileage), which makes it impossible to verify and substantiate CenturyLink's numbers. For example, CenturyLink's composite rate for BellSouth does not appear to take into consideration that different rates are charged for tandem versus direct connection and ignores industry standard practices for calculating transport mileage.

For the foregoing reasons, CenturyLink is not entitled to any relief with respect to the PICCs invoiced to it by Birch.

TOLL-FREE DATABASE QUERY CHARGES

CenturyLink also challenges Birch's 8YY database query charges because those charges do not mirror the 8YY database query charges of BellSouth.³² Notwithstanding that Birch bills CenturyLink monthly for such charges on the same basis for 42 states, CenturyLink raises its challenge only for the nine states in the BellSouth region.

The 8YY database query charge is a separately-stated line item on Birch's switched access service bills. The 8YY database query charge is set forth in the Birch FCC Access Tariff, and has been in place since at least 2008.³³ When a toll-free call is originated, Birch must query

³¹ See, *e.g.*, Complaint at Appendices. CenturyLink has created a "Birch Cost Per Minute" and a "BellSouth Cost Per Minute," but has provided no data or support in its Complaint for how those "costs" were calculated or why it would be appropriate to collapse traffic-sensitive, per-minute switched access service rates with the non-traffic-sensitive, per-line PICC.

³² Complaint at 3-5. Although not clear from the face of the Complaint, CenturyLink is not challenging the entirety of Birch's 8YY database query charges. Rather, CenturyLink has been "short paying" such charges by the amount of the difference between Birch's charge (\$0.0075) and BellSouth's comparable charge (\$0.00421). As discussed in the text, Birch's charge is not capped by the amount of the ILEC charge.

³³ Birch FCC Access Tariff section 5.4.4.

the 8YY database to determine the IXC to which the toll-free call should be routed.³⁴ The 8YY database query charge applies to each query Birch performs.³⁵

The Commission has twice rejected requests to cap 8YY database query charges at the competing ILEC rate. In the *2001 Access Charge Order*, the Commission stated:

Late in this proceeding, Sprint argued that CLEC toll-free database query charges should also be subject to a tariff benchmark or should be detariffed above the rate of the competing ILEC. . . . Given the dearth of record evidence on this issue, we decline at this time to impose by rule the limit on database query charges that Sprint proposes. We expect, however, that CLECs will not look to this category of tariffed charges to make up for access revenues that the benchmark system denies them.³⁶

The Commission, thus, clearly contemplated that the toll-free database query charges would be separate from and in addition to the benchmark rate cap system applicable to interstate switched access services. Similarly, in 2004, the Commission stated:

Because we find that IXC allegations of wide-spread fraud or abuse may indeed be overstated, we also reject AT&T's request that we limit 8YY database query charges based on the incumbent LEC charges.³⁷

CenturyLink in the Complaint quotes from the *2001 Access Charge Order* and the *2004 Access Charge Order* regarding access rates for toll-free traffic being subject to the benchmark, but switched access service rates for toll-free traffic are different from and do not encompass the database query charges, which are separately and more specifically addressed in note 128 of the *2001 Access Charge Order* and note 251 of the *2004 Access Charge Order* as quoted above.

In a pending proceeding before the Commission, AT&T has requested that the Commission forbear from all of its rules that allow local exchange carriers to tariff a charge

³⁴ Birch FCC Access Tariff section 4.2.5.

³⁵ Birch FCC Access Tariff section 5.2.4.

³⁶ *2001 Access Charge Order* at n.128.

³⁷ *Access Charge Reform*, 19 FCC Rcd 9108, n.251 (2004) (“*2004 Access Charge Order*”).

billed to IXCs for toll-free database charges.³⁸ In that proceeding, CenturyLink itself suggested that the Commission adopt a “more targeted solution” than forbearance relief regarding 8YY database query charges, specifically asking the Commission to “clarify that those charges are subject to the CLEC benchmark rule.”³⁹ In another more recent proceeding, CenturyLink again asked the Commission to make that clarification.⁴⁰ If the position asserted by CenturyLink in the Complaint regarding these charges were established law, such “targeted solution” and “clarification” would not be necessary. Moreover, if there is to be a change in the law, such a change should be adopted in the context of an industry-wide rulemaking or declaratory ruling proceeding after notice and comment, not in resolving a one-off informal complaint.

For the foregoing reasons, CenturyLink is not entitled to any relief in respect of the toll-free database query charges charged to it by Birch.

REMOTE/HOST ADDITIVE

Apart from the PICC and toll-free database query charges, CenturyLink challenges Birch’s interstate switched access service rates as exceeding the benchmark. This is an artifact of Birch’s tariffed charges for interstate switched access service, which include a remote/host (“RH”) additive. CenturyLink and Birch have had extensive communications about the RH additive and the appropriate additive to be used, and CenturyLink is being coy in not making any specific reference to RH in its Complaint. Birch uses a 35% RH additive nationwide.

As an ILEC, BellSouth’s interstate switched access service rates are based on individual components, and the charge is calculated based on actual minutes and actual mileage to the

³⁸ WC Docket 16-363, Petition of AT&T Services, Inc. for Forbearance under 47 U.S.C. § 160(c) (filed Sept. 20, 2016).

³⁹ WC Docket No. 16-363, CenturyLink Opposition/Comments to AT&T Forbearance Petition, at 5 (filed Dec. 2, 2016).

⁴⁰ WC Docket Nos. 10-90, 07-135, Comments of CenturyLink at 5-6 (filed July 31, 2017).

remote switch. As a CLEC, Birch does not bill based on individual components and actual mileage as BellSouth does; Birch uses the RH additive as a proxy to reflect that some traffic will be routed to a remote switch. Birch is permitted to use a composite interstate switched access service rate, and is not required to mirror the exact components used by the competing ILEC for its interstate switched access service rate.⁴¹

Birch's interstate switched access service rates set forth in the Birch FCC Access Tariff include the 35% RH additive.⁴² These rates were filed in the Birch FCC Access Tariff on 15-day notice, and thus, are "deemed lawful" under 47 U.S.C. § 204(a)(3), precluding any refund.⁴³ The Birch FCC Access Tariff also states the RH additive is included in Birch's composite interstate switched access service rate.⁴⁴ While the tariff filing would not preclude a prospective challenge, Birch's RH additive was determined using industry-standard methodology and is permissible under the Commission's benchmark regime.

The Commission does not require absolute precision in the determination of the remote/host additive; rather, only a reasonable approximation is required.⁴⁵ In 1993, the Commission adopted a methodology which required ILECs to bill separately for transport from the serving wire center to the host office at a flat rate and from the host office to the remote

⁴¹ 2001 Access Charge Order ¶¶ 54-55; see also *id.* at n.125.

⁴² Birch FCC Access Tariff section 5.4.3.

⁴³ 47 U.S.C. § 204(a)(3); *Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996*, 12 FCC Rcd 2170, ¶ 8 (1997) ("*Streamlined Tariff Order*"); see also *PAETEC Communications, Inc. v. MCI Communications Services, Inc.*, 784 F. Supp. 2d 542, 547 (E.D. Pa. 2011) (no refund of above benchmark rates charged pursuant to deemed lawful tariff).

⁴⁴ Birch FCC Access Tariff section 5.2.1.B. The Birch FCC Access Tariff states Birch's composite switched access service rate includes switched transport, which includes "transport between an end office which serves as a host for a remote switching system or module (RSS or RSM) and the RSS or RSM or its equivalent." Birch revised the Birch FCC Access Tariff in July 2014, July 2015, July 2016, and July 2017 to comply with various Commission mandates regarding intercarrier compensation, and each of these revisions was filed pursuant to Section 204(a)(3) of Act.

⁴⁵ See, e.g., 2004 Access Charge Order ¶ 21 ("Competitive LECs that impose [common transport] charges should calculate the rate in a manner that reasonably approximates the competing incumbent LEC rate.").

office at a per minute rate.⁴⁶ The Birch FCC Access Tariff uses this same approach. In fact, the 35% additive used by Birch was determined not by Birch, but by Technologies Management, Inc. (“TMI”), the industry leader in performing such calculations.⁴⁷ TMI made this determination using a standard methodology premised upon network architecture to reach a composite figure based on the number of remote switches as a percentage of total switches.⁴⁸ The TMI-calculated RH additive is used by numerous other CLECs, and as noted, Birch uses the 35% RH additive as a component of its rates that apply to all switched access service customers throughout the country. Based on its independent review, Birch estimates that the RH additive for the BellSouth region is in the neighborhood of 39%.⁴⁹ CenturyLink bears the burden of proof, and it has not provided any evidence whatsoever to substantiate the use of a lower figure than 35%.⁵⁰

STATUTE OF LIMITATIONS

For the reasons outlined above, CenturyLink is not entitled to any refunds or other monetary relief. If it were so entitled, however, its claims dating back to 2010 and/or 2012 would be largely precluded by the applicable two year statute of limitations set forth in 47 U.S.C.

⁴⁶ *Transport Rate Structure and Pricing*, 8 FCC Rcd 5370 (1993); *see also Barry County Telephone Company*, 11 FCC Rcd 5621 (1996).

⁴⁷ *See, e.g.*, TMI, CLEC Switched Access Rate Cap Summary, *available at*: <http://www.tminc.com/switched-access-rates-cap-summary>.

⁴⁸ *See, e.g.*, TMI, CLEC Switched Access Rate Cap Summary, *available at*: <http://www.tminc.com/switched-access-rates-cap-summary>.

⁴⁹ To verify the TMI calculation, Birch reviewed Table 7 in the Local Exchange Routing Guide (“LERG”), which contains switch homing arrangement information. *See LERG Routing Guide, General Information*, *available at* www.trainfo.com/products_services/tra/downloads/lerginfo.doc. Birch then compared this information to the number of switches in BellSouth’s territory to reach its 39% estimate for the region.

⁵⁰ CenturyLink also challenges Birch’s intrastate switched access service rates based on the use of the 35% RH additive. To comply with 47 C.F.R. § 51.911(c), Birch applies its interstate switched access service rates for intrastate switched access services.

§ 415.⁵¹ CenturyLink, thus, could not recover for any charges prior to March 7, 2015 (*i.e.*, two years preceding the date of the Complaint).

CONCLUSION

For the foregoing reasons, CenturyLink is not entitled to any of the relief sought in its Complaint.

If you have any questions concerning this matter, please contact the undersigned.

Respectfully submitted,

/s/ Chérie R. Kiser

Chérie R. Kiser
Thorn Rosenthal
Angela F. Collins

Counsel for Birch Communications, Inc.

cc: Timothy M. Boucher, Counsel for CenturyLink (via electronic mail)
Ross Dino, Counsel for CenturyLink (via electronic mail)
Gordon P. Williams, Jr., Senior Vice President and General Counsel, Birch

⁵¹ This statute has been applied specifically in a similar case involving a request for recovery of previously paid PICCs. *See Operator Communications, Inc. v. Contel of the South, Inc.*, 20 FCC Rcd 19783, ¶ 11 (2005) (“It is well established that a customer’s claim challenging the lawfulness of a carrier’s charges accrues when the customer receives the carrier’s bill containing the allegedly unlawful charges. Applying that rule here, a portion of OCI’s damages claim accrued each time OCI received a PICC bill from Verizon from April 1998 to April 2001. Accordingly, under the two-year statute of limitations set forth in section 415 of the Act, portions of OCI’s damages claim began to expire in April 2000, and the claim lapsed altogether in April 2003. Consequently, absent some basis for tolling the running of the limitations period, we must dismiss as time-barred OCI’s July 2004 claim for PICC refunds.”).

VERIFICATION

I, Kevin M. Dotts, Executive Vice President and Chief Financial Officer of Birch Communications, Inc., hereby certify under penalty of perjury that the statements in the foregoing Response are true, complete, and correct to the best of my knowledge, information, and belief.

Date:

9/28/17

A handwritten signature in black ink, appearing to read 'K. M. Dotts', written over a horizontal line.

Kevin M. Dotts
Executive Vice President and Chief Financial Officer
Birch Communications, Inc.

Exhibit E

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

BIRCH COMMUNICATIONS, INC.,

Plaintiff,

v.

CENTURYLINK COMMUNICATIONS, LLC,

Defendant.

Civil Action No. _____

COMPLAINT

Plaintiff Birch Communications, Inc. (“Birch”), by its undersigned counsel, brings this Complaint against CenturyLink Communications, LLC (“CenturyLink”) and alleges as follows:

INTRODUCTION

1. This is a collection action against CenturyLink arising from CenturyLink’s unlawful refusal to pay three types of tariffed charges for telecommunications services rendered by Birch to CenturyLink in the nine-state BellSouth region:

- a. toll-free database query charges (“8YY Charges”);
- b. the remote switch component of interstate and intrastate switched access service charges (“Remote/host Charges”); and
- c. presubscribed interexchange carrier charges (“PICC”).

PARTIES

2. Birch is a Georgia corporation with its principal place of business in Atlanta, Georgia. It is a competitive local exchange carrier (“CLEC”) that provides interstate and intrastate exchange access service, as well as local, long distance and enhanced services to business telecommunications customers.

3. Upon information and belief, CenturyLink is a Delaware corporation with its principal place of business in Denver, Colorado. CenturyLink is an interexchange carrier (“IXC”), a CLEC, and a common carrier subject to the federal Communications Act of 1934, as amended (“Communications Act”).

JURISDICTION AND VENUE

4. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 and 47 U.S.C. §§ 206 and 207. This court also has jurisdiction pursuant to 28 U.S.C. § 1332(a)(1) on the basis that Birch and CenturyLink are citizens of different states, and the amount in controversy exceeds \$75,000. This Court has supplemental jurisdiction over Birch’s state law claims pursuant to 28 U.S.C. § 1367(a).

5. This Court has personal jurisdiction over CenturyLink because, upon information and belief, CenturyLink’s state of domicile is in this district.

6. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) based upon, on information and belief, CenturyLink’s residence and amenability to personal jurisdiction in this district.

FACTUAL ALLEGATIONS

7. Birch provides tariffed services to CenturyLink in forty-two states. There are no billing disputes between Birch and CenturyLink of which Birch is aware as respects thirty-three of those states, notwithstanding that Birch has been billing CenturyLink, and CenturyLink has been paying such invoices, for 8YY Charges and switched access services (including the Remote/host Charges) in those thirty-three states. CenturyLink in nine states (Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee – the “BellSouth Region”), however, has been not paying Birch in full for tariffed 8YY Charges and

tariffed switched access service charges (including the Remote/host Charges), and has stopped paying Birch altogether for tariffed PICC amounts. Established precedent from the Federal Communications Commission (“FCC”) precludes telecommunications carriers such as CenturyLink from engaging in self-help and short-paying invoices for telecommunications services pursuant to tariff or contract. *See, e.g., NOS Communications, Inc., Complainant v. American Telephone and Telegraph Company, Defendant*, 7 F.C.C.R. 7889, ¶ 2 (1992); *MCI Telecommunications Corporation*, 62 F.C.C.2d 703 (1976).

A. 8YY Charges

8. Birch’s 8YY Charge is set forth in the Access Services Tariff of Birch Communications, Tariff FCC No. 1 (“FCC Access Tariff”) and has been in place since at least October 24, 2008. When a toll-free call is originated, Birch must query the 8YY database to determine to which IXC the toll-free call should be routed. The \$0.0075 8YY Charge applies to each query Birch performs. No other carrier-customer besides CenturyLink has challenged Birch’s 8YY Charges, and CenturyLink has not challenged and has been paying Birch’s 8YY Charges in full in thirty-three states outside the BellSouth Region.

9. Since July 2012, CenturyLink has been “short-paying” Birch for invoiced 8YY Charges, and has only paid a portion of the invoiced 8YY Charges. Through invoices dated August 8, 2017, CenturyLink’s unpaid 8YY Charges total approximately \$113,478.45 (including interest and late fees).

B. Remote/host Charges

10. The Birch charges for interstate and intrastate switched access service include an additive to reflect the cost of routing traffic through a remote switch. The additive used is determined by an independent consultant (Technologies Management, Inc., “TMI”) for Birch and a large number of other CLECs. Birch does not determine its interstate or intrastate switched access service rates based on individual components and actual mileage to the remote switch as an incumbent local exchange carrier (“ILEC”) may do. As a CLEC, it is permitted by the FCC to use a composite rate as a proxy to reflect that some traffic will be routed to a remote switch because it does not have the facility-based network the ILEC does. Specifically, Birch uses a 35% Remote/host Charge additive nationwide. TMI used an industry-standard methodology to determine the percentage.

11. The Birch interstate switched access service rates incorporating the 35% Remote/host Charge additive were filed in the Birch FCC Access Tariff (§ 5.4.3) on 15-day notice and, thus, are “deemed lawful” under 47 U.S.C. § 204(a)(3).

12. The Birch intrastate switched access service rates incorporating the 35% Remote/host Charge additive are set forth in the Birch intrastate access tariffs filed with the state public utility commissions in eight of the nine states in the BellSouth Region. The same additive was used in the ninth state, North Carolina, but the North Carolina Utilities Commission does not require the filing of tariffs by competitive carriers.

13. No other Birch carrier-customer besides CenturyLink has challenged the Remote/host Charge component of Birch’s interstate or intrastate switched access service rates, and CenturyLink has not challenged and has been paying in full Birch’s interstate and intrastate

switched access service rates (including the Remote/host Charge component) in thirty-three states outside the BellSouth Region.

14. Since July 2012, CenturyLink has been “short-paying” Birch for invoiced interstate switched access service charges that include the 35% Remote/host Charge additive in the BellSouth Region, and has only paid a portion of the invoiced interstate switched access service charges. Through invoices dated August 8, 2017, CenturyLink’s unpaid interstate switched access service charges total approximately \$187,248.49 (including interest and late fees).

15. Commencing with invoices dated March 8, 2017, CenturyLink also started “short-paying” Birch’s invoiced intrastate switched access service charges that include the 35% Remote/host Charge additive in the BellSouth Region, and has only paid a portion of the invoiced intrastate switched access service charges. Through invoices dated August 8, 2017, CenturyLink’s unpaid intrastate switched service access charges total approximately \$6,910.16 (including interest and late fees).

C. PICC

16. The PICC specifically is authorized by the FCC at 47 C.F.R. § 69.153. It is to be expressed as a flat per-line, per-month charge to allow telecommunications carriers to recover their costs from a multi-line business subscriber’s presubscribed interexchange carrier; the flat-rate charge is intended to reflect the way service costs are incurred by Birch and other service providers. *Access Charge Reform*, 12 F.C.C.R. 16606 ¶¶ 5-6, 16 (1997); *Defining Primary Lines*, 14 F.C.C.R. 4205, ¶¶ 7, 9 (1999). The PICC is capped by regulation at \$4.31 per-line per-month.

17. The Birch PICC is \$2.50 per-line, per-month, applies to interexchange carriers with presubscribed multi-line business subscribers, and the charge has been in the Birch FCC Access Tariff since at least 2008. Several CLECs that compete with Birch also include a PICC in their FCC access tariffs.

18. Until December 2016, CenturyLink paid Birch for invoiced PICC. Commencing in January 2017, however, CenturyLink ceased paying these charges. Through invoices dated August 8, 2017, CenturyLink's unpaid PICCs total approximately \$1,086,933.28 (including interest and late fees).

COUNT I

(Breach of Interstate Tariff)

19. Birch repeats, realleges, and incorporates herein by reference each and every allegation contained in paragraphs 1 to 18 of this Complaint as if fully set forth herein.

20. Birch has provided interstate 8YY database query services to CenturyLink. CenturyLink is required to pay the 8YY Charges as set forth in the Birch FCC Access Tariff. Despite due demand, CenturyLink has failed to pay in full the 8YY Charges that it owes under the Birch FCC Access Tariff and the associated interest and late fees.

21. Birch has provided interstate switched access services to CenturyLink. CenturyLink is required to pay the interstate switched access service charges as set forth in the Birch FCC Access Tariff. Despite due demand, CenturyLink has failed to pay in full the interstate switched access service charges that it owes under the Birch FCC Access Tariff and the associated interest and late fees.

22. Birch has provided switched access service to CenturyLink, which has permitted CenturyLink to provide long distance services to its presubscribed business customers.

CenturyLink is required to pay the PICC as set forth in the Birch FCC Access Tariff. Despite due demand, CenturyLink has failed to pay the PICCs it owes under the Birch FCC Access Tariff and the associated interest and late fees.

23. Birch has been, and continues to be, damaged by CenturyLink's refusal to pay the interstate 8YY Charges, switched access service charges, and PICCs CenturyLink owes, plus interest and late fees as called for in the Birch FCC Access Tariff. Birch is entitled to recover these amounts or such other damages as may be established at trial.

COUNT II

(Section 203 of the Communications Act)

24. Birch repeats, realleges, and incorporates herein by reference each and every allegation contained in paragraphs 1 to 23 of this Complaint as if fully set forth herein.

25. CenturyLink is required to pay Birch's interstate 8YY Charges, switched access service charges, and PICCs as set forth in the Birch FCC Access Tariff. Despite due demand, CenturyLink has failed to pay the interstate 8YY Charges, switched access service charges, and PICCs CenturyLink owes under the Birch FCC Access Tariff and the associated interest and late fees.

26. Section 203 of the Communications Act, 47 U.S.C. § 203, imposes upon telecommunications carriers the duty to file tariffed rates for regulated communications services and to pay the tariffed rates for such services. Section 203(c) states that no carrier shall "charge, demand, collect, or receive a greater or less or different compensation, for such communication."

27. CenturyLink has engaged in an unlawful practice of refusing to pay Birch its tariffed rates for the interstate services it has used in violation of Section 203(c) of the Communications Act.

28. Birch has been, and continues to be, damaged by CenturyLink's refusal to pay the interstate 8YY Charges, switched access service charges, and PICCs it owes, plus interest and late fees as called for in the Birch FCC Access Tariff. Birch is entitled to recover these amounts or such other damages as may be established at trial.

29. Birch is entitled to recover its reasonable attorneys' fees pursuant to Section 206 of the Communications Act, 47 U.S.C. § 206.

COUNT III

(Section 201 of the Communications Act)

30. Birch repeats, realleges, and incorporates herein by reference each and every allegation contained in paragraphs 1 to 29 of this Complaint as if fully set forth herein.

31. CenturyLink is required to pay the Birch interstate 8YY Charges, switched access service charges, and PICCs as set forth in the Birch FCC Access Tariff. Despite due demand, CenturyLink has failed to pay the interstate 8YY Charges, switched access service charges, and PICCs it owes under the Birch FCC Access Tariff and the associated interest and late fees.

32. Section 201(b) of the Communications Act, 47 U.S.C. § 201, imposes upon telecommunications carriers the duty that their practices in connection with communications services be "just and reasonable."

33. CenturyLink has engaged in unreasonable, unjust and unlawful self-help by refusing to pay Birch its tariffed rates for the interstate services it has used in violation of Section 201(b) of the Communications Act.

34. Birch has been, and continues to be, damaged by CenturyLink's refusal to pay the interstate 8YY Charges, switched access service charges, and PICCs it owes, plus interest and

late fees as called for in the Birch FCC Access Tariff. Birch is entitled to recover these amounts or such other damages as may be established at trial.

35. Birch is entitled to recover its reasonable attorneys' fees pursuant to Section 206 of the Communications Act, 47 U.S.C. § 206.

COUNT IV

(Breach of Intrastate Tariffs)

36. Birch repeats, realleges, and incorporates herein by reference each and every allegation contained in paragraphs 1 to 35 of this Complaint as if fully set forth herein.

37. Birch has provided intrastate switched access services to CenturyLink. CenturyLink is required to pay Birch's intrastate switched access service charges as set forth in the Birch intrastate tariffs in each of the states in the BellSouth Region, other than North Carolina.

38. Despite due demand, CenturyLink has failed to pay in full the intrastate switched access service charges it owes under the Birch intrastate access tariffs and the associated interest and late fees.

39. Birch has been, and continues to be, damaged by CenturyLink's refusal to pay the intrastate switched access service charges it owes, plus interest and late fees as called for in the Birch intrastate access tariffs. Birch is entitled to recover these amounts or such other damages as may be established at trial.

COUNT V

(Quantum Meruit and Unjust Enrichment)

40. Birch repeats, realleges, and incorporates herein by reference each and every allegation contained in paragraphs 1 to 39 of this Complaint as if fully set forth herein.

41. Birch provided, and continues to provide, valuable interstate and intrastate services to CenturyLink.

42. CenturyLink has accepted, used, and enjoyed the interstate and intrastate services that Birch has provided and continues to provide.

43. The reasonable and fair market value of the services for which CenturyLink has refused to pay is established by the rates set forth in the FCC Access Tariff and intrastate access tariffs of Birch.

44. CenturyLink would be unjustly enriched if it were permitted to use the Birch interstate and intrastate services without paying the reasonable value thereof.

45. Birch, accordingly, is entitled to recover the reasonable value of the interstate and intrastate services it provided and provides to CenturyLink and the associated interest and late fees.

COUNT VI

(Declaratory Judgment)

46. Birch repeats, realleges, and incorporates herein by reference each and every allegation contained in paragraphs 1 to 45 of this Complaint as if fully set forth herein.

47. A present, actionable, and justifiable controversy exists with respect to the legal rights between Birch and CenturyLink. Such controversy arises under the Communications Act and common law. Birch cannot obtain relief other than through litigation.

48. CenturyLink's refusal to pay tariffed and invoiced charges for its use of the Birch interstate and intrastate services, and CenturyLink's refusal to pay associated interest and late fees, are ongoing and repeated practices.

49. Absent declaratory judgment, CenturyLink will continue its wrongful practices of refusing to pay Birch's lawful charges for interstate and intrastate services from which CenturyLink benefits.

50. It would be unduly burdensome and inefficient for Birch to bring new actions for damages each time CenturyLink wrongfully refuses to pay an invoice or does not pay an invoice in full.

51. Accordingly, Birch is entitled to a declaratory judgment, and such further relief based upon that declaratory judgment, as the Court deems proper pursuant to 28 U.S.C. §§ 2201 and 2202, determining that Birch:

- a. has lawfully charged CenturyLink for services rendered in the provision of interstate and intrastate services, either pursuant to the Birch FCC Access Tariff, the Birch intrastate access tariffs, or in accordance with principles of equity;
- b. CenturyLink has violated the Birch FCC Access Tariff and Birch intrastate access tariffs by refusing and failing to pay in full invoiced interstate and intrastate charges and associated late fees and interest; and
- c. CenturyLink is obligated to make timely payment of these charges as they become due.

PRAYER FOR RELIEF

WHEREFORE, Birch respectfully requests that this Court enter judgment against CenturyLink:

(1) for all damages incurred by Birch, in an amount to be determined at trial, but no less than the invoiced charges that CenturyLink owes Birch, together with associated tariffed interest and late fees;

(2) for Birch's reasonable attorneys' fees and the costs of this action pursuant to 47 U.S.C. § 206;

(3) for declaratory relief as set forth above; and

(4) for such other and further relief as this Court deems just and proper.

Dated: September 29, 2017

Respectfully submitted,

/s/ Henry E. Gallagher, Jr.

Henry E. Gallagher, Jr. (#495)

Mary Akhimien (#5448)

CONNOLLY GALLAGHER LLP

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Wilmington, DE 19801

(302) 757-7300

hgallagher@connollygallagher.com

makhimien@connollygallagher.com

*Attorneys for Plaintiff, Birch
Communications, Inc.*

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Birch Communications, Inc.

(b) County of Residence of First Listed Plaintiff _____

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Henry E. Gallagher, Jr. (#495), and Mary Akhimien (#5448)
Connolly Gallagher LLP, 1000 West Street, Suite 1400, Wilmington, DE
(302) 757-7300

DEFENDANTS

CenturyLink Communications, LLC

County of Residence of First Listed Defendant _____

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES | |
|---|--|--|---|---|---|
| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice | PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes |
| REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education | PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement | | | |

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTIONCite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
47 U.S.C. §§ 201, 203

Brief description of cause:

Collection action for tariffed charges relating to telecommunications services

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$ TBD (greater than \$1 million)

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

09/29/2017

SIGNATURE OF ATTORNEY OF RECORD

/s/ Henry E. Gallagher, Jr. (#495)

FOR OFFICE USE ONLY

RECEIPT # _____

AMOUNT _____

APPLYING IFP _____

JUDGE _____

MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

Exhibit F

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

BIRCH COMMUNICATIONS, INC.,

Plaintiff,

v.

CENTURYLINK COMMUNICATIONS, LLC.,

Defendant.

C.A. No. 17-1367-JEJ

**ORDER GRANTING UNOPPOSED MOTION TO STAY PROCEEDINGS
PURSUANT TO DOCTRINE OF PRIMARY JURISDICTION**

The Court, having reviewed the Unopposed Motion to Stay Proceedings Pursuant to Doctrine of Primary Jurisdiction, and being fully advised of the premises, hereby GRANTS the Unopposed Motion and refers to the Federal Communications Commission ("FCC") under the doctrine of primary jurisdiction the following issues:

The focus of the referral to the FCC is whether the rates contained in Birch's interstate access tariff violate the FCC's CLEC benchmark rule contained in 47 C.F.R. § 61.26. Specifically including at least the following:

1. Whether Birch violates the FCC's CLEC benchmark rule by virtue of its approach to the flat rate PICC charge;
2. Whether Birch violates the FCC's CLEC benchmark rule by virtue of its approach to the 8YY database query charges; and,
3. Whether Birch violates the FCC's CLEC benchmark rule by virtue of its approach to host/remote additive charges.

The Court specifically refers the propriety of these charges to the FCC for resolution.

This case is now stayed pending the FCC's resolution of these issues.

SO ORDERED this 8th day of January, 2018.



The Honorable John E. Jones III
United States District Judge

Exhibit G



Chuck Steese

Direct T 720.200.0677 F 720.200.0679

csteese@armstrongteasdale.com

MISSOURI KANSAS COLORADO NEVADA ILLINOIS

March 5, 2018

VIA CERTIFIED MAIL AND EMAIL

**Chérie R. Kiser
Thorn Rosenthal
c/o Birch Communications, Inc.
Cahill Gordon & Reindel LLP
1990 K Street, N.W., Suite 950
Washington, D.C. 20006
CKiser@cahill.com
TRosenthal@cahill.com**

**Corporation Services Company
40 Technology Parkway South, Suite 300
Norcross, Georgia 30092**

**Re: CenturyLink Communications, LLC and Level 3 Communications, LLC v. Birch
Communications, Inc.**

Dear Ms. Kiser and Mr. Rosenthal,

CenturyLink Communications, LLC (“CenturyLink”) and Level 3 Communications LLC (“Level 3”) are interexchange carriers that Birch Communications, Inc. (“Birch”) bills for switched access services. As you know, CenturyLink and Level 3 claim that Birch’s switched access billing is illegal in violation of 47 C.F.R. § 61.26 — the CLEC benchmark rule.

To address this issue, CenturyLink brought an informal complaint on March 7, 2017. CenturyLink and Level 3 now plan to bring a formal complaint. The formal complaint will allege that (1) Birch’s practice of assessing a Presubscribed Interexchange Carrier Charge (“PICC”) in the BellSouth territories — in addition to assessing other usage-based switched access charges that are roughly equivalent in and of themselves to the competing ILECs’ (Bell South’s) aggregate tariffed interstate switched access rates — caused Birch’s aggregate switched access charges to violate the Commission’s benchmark rule set forth in 47 C.F.R. § 61.26 ; and (2) Birch’s excessive switched access charges render its filed interstate access tariff void *ab initio*, and therefore that Birch was unauthorized to assess any switched access charges without a valid tariff or agreement in effect. CenturyLink and Level 3 will be seeking damages, interest and, where applicable, attorneys’ fees and costs.

Birch is very familiar with the issues, having participated in many calls discussing mediation and trying to reach actual stipulations. Nonetheless, if you would like to respond to this letter, please do by Friday, March 9, 2017. Our current plan is to file the formal complaint the week of March 12, 2018.

Please let me know if you have any questions or need additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Chuck W. Steese". The signature is fluid and cursive, with the first name "Chuck" and last name "Steese" being more legible than the middle initial "W".

Chuck Steese

CC: Timothy Boucher
Adam Sherr
Chuck Williams



Chuck Steese

Direct T 720.200.0677 F 720.200.0679

csteese@armstrongteasdale.com

MISSOURI KANSAS COLORADO NEVADA ILLINOIS

March 5, 2018

VIA CERTIFIED MAIL AND EMAIL

**Chérie R. Kiser
Thorn Rosenthal
c/o Birch Communications, Inc.
Cahill Gordon & Reindel LLP
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**Corporation Services Company
40 Technology Parkway South, Suite 300
Norcross, Georgia 30092**

**Corporation Guarantee & Trust Company
1150 Connecticut Avenue, NW, Suite 900
Washington, DC 20036**

**Re: CenturyLink Communications, LLC and Level 3 Communications, LLC v. Birch
Communications, Inc.**

Dear Ms. Kiser and Mr. Rosenthal,

CenturyLink Communications, LLC ("CenturyLink") and Level 3 Communications LLC ("Level 3") are interexchange carriers that Birch Communications, Inc. ("Birch") bills for switched access services. As you know, CenturyLink and Level 3 claim that Birch's switched access billing is illegal in violation of 47 C.F.R. § 61.26 — the CLEC benchmark rule.

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March 5, 2018

Page 2

47 C.F.R. § 61.26 ; and (2) Birch's excessive switched access charges render its filed interstate access tariff void *ab initio*, and therefore that Birch was unauthorized to assess any switched access charges without a valid tariff or agreement in effect. CenturyLink and Level 3 will be seeking damages, interest and, where applicable, attorneys' fees and costs.

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Please let me know if you have any questions or need additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Chuck W. Steese". The signature is fluid and cursive, with the first name "Chuck" and last name "Steese" clearly legible.

Chuck Steese

CC: Timothy Boucher
Adam Sherr
Chuck Williams

Exhibit H

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CHRISTOPHER W. CLEMENT
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S. PENNY WINDLE
DAVID WISHENGRAD
COREY WRIGHT
JOSHUA M. ZELIG
DANIEL J. ZUBKOFF

*ADMITTED IN DC ONLY

March 9, 2018

**Re: CenturyLink Communications, LLC and Level 3 Communications, LLC
vs. Birch Communications, Inc.**

Dear Chuck:

Birch Communications, Inc. ("Birch") is in receipt of your letter dated March 5, 2018 in which you outline the allegations CenturyLink Communications, LLC ("CenturyLink") and Level 3 Communications, LLC ("Level 3") intend to include in their formal complaint to be filed with the Federal Communications Commission ("FCC") the week of March 12, 2018.

Birch denies that its switched exchange access service charges violate 47 C.F.R. § 61.26. The Presubscribed Interexchange Carrier Charge ("PICC") is separate from and not included in the benchmark rate for interstate switched exchange access services under 47 C.F.R. § 61.26(c). Further, Birch rejects your allegation that the Birch Access Services Tariff, Tariff FCC No. 1 (the "Birch FCC Tariff"), is void *ab initio*.

Birch also notes that Level 3 has not properly disputed Birch's invoiced PICC. Under the Birch FCC Tariff, Level 3 is required to notify Birch of any disputed items on an invoice within 90 days of receipt of the invoice. Level 3 first disputed a portion of the Birch PICC on February 26, 2018, and that dispute related only to the February 8, 2018 invoice. Birch is unaware of any other disputes filed by Level 3 with respect to PICC. Further, Level 3 has made no effort to discuss the possibility of settlement with Birch prior to the filing of a formal complaint, as required under the FCC's formal complaint rules.

Finally, Birch reminds you that it has not received a response to its global settlement offer provided to CenturyLink on February 9, 2018.

- 2 -

If you have any questions concerning this matter, please contact the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read 'Thorn Rosenthal', with a stylized, cursive script.

Thorn Rosenthal
Counsel to Birch Communications, Inc.

Charles W. Steese, Esq.
Counsel for CenturyLink Communications, LLC
and Level 3 Communications, LLC
Armstrong Teasdale LLP
4643 South Ulster Street, Suite 800
Denver, CO 80237
csteese@armstrongteasdale.com

Via Electronic Mail

cc: Timothy M. Boucher, Esq.
Adam L. Sherr, Esq.
Gordon P. Williams, Jr., Esq.
Chérie R. Kiser, Esq.

Exhibit I

*This tariff, Birch Communications Tariff FCC No. 1, replaces in its entirety,
Access Integrated Networks d/b/a Birch Communications Tariff FCC No. 3*

TITLE PAGE
ACCESS SERVICES TARIFF
OF
BIRCH COMMUNICATIONS

This tariff contains the descriptions, regulations, and rates applicable to the furnishing of service and facilities for telecommunications services provided by Birch Communications. This tariff is on file with the Federal Communications Commission (FCC). Copies may be inspected during normal business hours at the Company's principal place of business at 2300 Main St. Suite 600, Kansas City, MO 64108.

Wherever in this Tariff or its headings, the term "Company" or the name "Birch" appears, that shall mean and shall refer to Birch Communications.

CHECK SHEET

Sheets of this tariff are effective as of the date shown at the bottom of the respective sheet(s). Original and revised sheets as named below comprise all changes from the original tariff and are currently in effect as of the date on the bottom of this page.

| SHEET | REVISION |
|-------|----------------------------|
| 1 | Original |
| 2 | 12 th Revised * |
| 3 | 12 th Revised * |
| 3.1 | 1 st Revised |
| 4 | 2 nd Revised |
| 5 | 1 st Revised |
| 6 | Original |
| 7 | Original |
| 8 | Original |
| 9 | Original |
| 10 | Original |
| 11 | Original |
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| 26 | Original |
| 27 | Original |
| 28 | Original |
| 29 | Original |
| 30 | Original |
| 31 | Original |
| 32 | Original |
| 33 | 1 st Revised |
| 34 | Original |
| 35 | Original |
| 36 | Original |
| 37 | Original |
| 38 | Original |
| 39 | Original |

*Indicates pages submitted with most recent filing.

Transmittal No. 13

Issued: July 14, 2017

by: Gordon P. Williams, Jr. – Senior Vice President & General Counsel
2323 Grand Blvd., Suite 925
Kansas City, MO 64108

Effective: July 29, 2017

CHECK SHEET, (CONT'D)

| SHEET | REVISION | |
|-------|-------------------------|---|
| 40 | Original | |
| 40.1 | Original | |
| 41 | Original | |
| 42 | Original | |
| 43 | Original | |
| 44 | Original | |
| 45 | Original | |
| 46 | Original | |
| 47 | Original | |
| 48 | Original | |
| 49 | Original | |
| 50 | 2 nd Revised | * |
| 51 | Original | |
| 52 | Original | |
| 53 | Original | |
| 54 | Original | |
| 55 | Original | |
| 56 | 6 th Revised | * |
| 56.1 | Original | * |
| 57 | Original | |
| 58 | 4 th Revised | * |
| 59 | Original | |
| 60 | Original | |
| 61 | Original | |
| 62 | Original | |
| 63 | Original | |
| 64 | Original | |
| 65 | Original | |
| 66 | Original | |
| 67 | Original | |
| 68 | Original | |
| 69 | 1 st Revised | |
| 70 | 1 st Revised | |
| 71 | 1 st Revised | |
| 72 | Original | |
| 73 | Original | |
| 73.1 | 2 nd Revised | |
| 74 | Original | |
| 75 | Original | |
| 76 | 1 st Revised | |
| 77 | Original | |

*Indicates pages submitted with most recent filing.

Transmittal No. 13

Issued: July 14, 2017

by: Gordon P. Williams, Jr. – Senior Vice President & General Counsel
2323 Grand Blvd., Suite 925
Kansas City, MO 64108

Effective: July 29, 2017

CONCURRING CARRIERS

Ionex Communications North, Inc. dba Birch Communications
Ionex Communications, Inc. dba Birch Communications
Ionex Communications South, Inc. dba Birch Communications
Ionex Communications, Inc. dba Birch Communications of the Southwest
Birch Telecom of Missouri, Inc. dba Birch Communication
Birch Telecom of the South, Inc. dba Birch Communications
Birch Telecom of the South, Inc. dba Birch Communications of the South
Birch Telecom of the South, Inc. dba Birch Communications of the Southeast
Birch Telecom of the West, Inc. dba Birch Communications (T)
Birch Telecom of the South, Inc. dba Birch Telecom dba Birch dba Birch Communications
Birch Telecom of the Great Lakes, Inc. dba Birch Communications
Birch Communications, Inc. (N)
Birch Communications of the Northeast, Inc. dba Birch Communications (N)

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Transmittal No. 7

Issued: May 10, 2013

by: Christopher J. Bunce, Vice President Legal and General Counsel
2300 Main St. Suite 600
Kansas City, MO 64108

Effective: May 11, 2013

SYMBOLS

The following are the only symbols used for the purposes indicated below:

| | |
|---|-----|
| C - To signify changed regulation | (N) |
| D – To signify discontinued rate or regulation. | (T) |
| I - Change resulting in an increase to a customer's bill. | |
| M - Moved from another tariff location. | (T) |
| N - To signify new rate or regulation. | |
| R - Change resulting in a reduction to a customer's bill. | |
| S – To signify reissued matter. | (N) |
| T - Change in text or regulation but no change in rate or charge. | |
| Z – To signify a correction. | (N) |

TARIFF FORMAT

A. Sheet Numbering - Sheet numbers appear in the upper right corner of the page. Sheets are numbered sequentially. However, new sheets are occasionally added to the tariff. When a new sheet is added between sheets already in effect, a decimal is added. For example, a new sheet added between sheets 14 and 15 would be 14.1.

B. Sheet Revision Numbers - Revision numbers also appear in the upper right corner of each page. These numbers are used to determine the most current sheet version on file with the FCC. For example, the 4th revised Sheet 14 cancels the 3rd revised Sheet 14. Because of various suspension periods, deferrals, etc. the FCC follows in its tariff approval process, the most current sheet number on file with the FCC is not always the tariff page in effect. Consult the Check Sheet for the sheet currently in effect.

C. Paragraph Numbering Sequence - There are nine levels of paragraph coding. Each level of coding is subservient to the next higher level:

- 2.
- 2.1
- 2.1.1
- 2.1.1.A.
- 2.1.1.A.1.
- 2.1.1.A.1.(a)
- 2.1.1.A.1.(a).I.
- 2.1.1.A.1.(a).I.(i).
- 2.1.1.A.1.(a).I.(i).(1).

D. Check Sheets - When a tariff filing is made with the FCC, an updated Check Sheet accompanies the tariff filing. The Check Sheet lists the sheets contained in the tariff, with a cross-reference to the current revision number. When new pages are added, the Check Sheet is changed to reflect the revision. All revisions made in a given filing are designated by an asterisk (*). There will be no other symbols used on this page if these are the only changes made to it (i.e., the format, etc. remain the same, just revised revision levels on some pages.) The tariff user should refer to the latest Check Sheet to find out if a particular sheet is the most current on file with the FCC.

SECTION 1 - DEFINITIONS

Certain terms used generally throughout this tariff for the Access Services of this Company are defined below.

Access Code: A uniform seven digit code assigned by the Company to an individual Customer. The seven digit code has the form 950-XXXX or 101XXXX.

Access Service: Switched Access to the network of an Interexchange Carrier for the purpose of originating or terminating communications.

Access Service Request (ASR): The industry service order format used by Access Service Customers and access providers as agreed to by the Ordering and Billing Forum.

Access Tandem: An Exchange Carrier's switching system that provides a concentration and distribution function for originating or terminating traffic between local switching centers and Customers' premises.

Authorized User: A person, firm, corporation or other entity that either is authorized by the Customer to use Access Services or is placed in a position by the Customer, either through acts or omissions, to use Access Services.

Carrier or Common Carrier: See Interexchange Carrier or Exchange Carrier.

Co-Carrier: Any other Telecommunications provider authorized by the Commission to provide local exchange service in the state.

Common Channel Signaling (CCS): A high-speed packet switched communications network which is separate (out of band) from the public packet switched and message networks. It is used to carry addressed signaling messages for individual trunk circuits and/or database related services between signaling points in the CCS network.

SECTION 1 - DEFINITIONS, (CONT'D)

Company: Birch Communications.

Customer: The person, firm, corporation or other entity which orders Service and is responsible for the payment of charges and for compliance with the Company's tariff regulations. The Customer could be an interexchange carrier, a wireless provider, or any other carrier authorized to operate in the state.

800 Data Base Access Service: The term "800 Data Base Access Service" denotes a toll-free originating Trunkside Access Service when the 8XX Service Access Code (i.e., 800, 822, 833, 844, 855, 866, 877, or 888 as available) is used. The term 8XX is used interchangeably with 800 Data Base Service throughout this Tariff to describe this service.

End User: Any individual, association, corporation, governmental agency or any other entity other than an Interexchange Carrier which subscribes to intrastate service provided by an Exchange Carrier.

Entrance Facility: A trunk facility connecting the Customer's point of presence with the local switching center.

Exchange Carrier: Any individual, partnership, association, joint-stock company, trust, governmental entity or corporation engaged in the provision of local exchange telephone service.

Firm Order Confirmation (FOC): Acknowledgment by the Company of receipt of an Access Service Request from the Customer and commitment by the Company of a Service Date.

Individual Case Basis: A service arrangement in which the regulations, rates and charges are developed based on the specific circumstances of the Customer's situation.

SECTION 1 - DEFINITIONS, (CONT'D)

Interexchange Carrier (IXC) or Interexchange Common Carrier: Any individual, partnership, association, joint-stock company, trust, governmental entity or corporation engaged in state or foreign communication for hire by wire or radio, between two or more exchanges.

LATA: A local access and transport area established pursuant to the Modification of Final Judgment entered by the United States District Court for the District of Columbia in Civil Action No. 82-0192 for the provision and administration of communications services.

Line Information Data Base (LIDB): The data base which contains base information such as telephone numbers, calling card numbers and associated billed number restriction data used in connection with the validation and billing of calls.

Local Access: The connection between a Customer's premises and a point of presence of the Exchange Carrier.

Local Switching Center: The switching center where telephone exchange service Customer station Channels are terminated for purposes of interconnection to each other and to interoffice Trunks.

Meet Point: A point of interconnection that is not an end office or tandem.

Meet Point Billing: The arrangement through which multiple Exchange Carriers involved in providing Access Services, divide the ordering, rating, and billing of such services on a proportional basis, so that each Exchange Carrier involved in providing a portion of the Access Service agrees to bill under its respective tariff.

Mobile Telephone Switching Office: Location where the wireless Customer maintains a facility for purposes of interconnecting to the Company's Network.

SECTION 1 - DEFINITIONS, (CONT'D)

Mutual Traffic Exchange: A compensation arrangement between certified local exchange service providers where local exchange service providers pay each other "in kind" for terminating local exchange traffic on the other's network.

Network Services: The Company's telecommunications Access Services offered on the Company's Network.

Non-Recurring Charges: The one-time initial charges for services or facilities, including but not limited to charges for construction, installation, or special fees, for which the Customer becomes liable at the time the Service Order is executed.

Off-Hook: The active condition of Switched Access or a telephone exchange service line.

On-Hook: The idle condition of switched access or a telephone exchange service line.

Out of Band Signaling: An exchange access signaling feature which allows customers to exchange call control and signaling information over a communications path which is separate from the message path.

Point of Presence: Location where the Customer maintains a facility for purposes of interconnecting to the Company's Network.

Premises: The space occupied by a Customer or Authorized User in a building or buildings or on contiguous property (except railroad rights-of-way, etc.).

Presubscription: An arrangement whereby an End User may select and designate to the Company an Interexchange Carrier (IXC) or Carriers it wishes to access, without an Access Code, for completing both intraLATA toll calls and/or interLATA calls. The selected IXC(s) are referred to as the End User's Primary Interexchange Carrier (PIC).

SECTION 1 - DEFINITIONS, (CONT'D)

Recurring Charges: The monthly charges to the Customer for services, facilities and equipment, which continue for the agreed upon duration of the service.

Service Order: The written request for Network Services executed by the Customer and the Company in a format devised by the Company; or, in the alternative, the submission of an Access Service Request by the Customer in the manner specified in this tariff.

Service(s): The Company's telecommunications Access Services offered on the Company's Network.

Signaling Point of Interface: The Customer designated location where the SS7 signaling information is exchanged between the Company and the Customer.

Signaling System 7 (SS7): The common Channel Out of Band Signaling protocol developed by the Consultative Committee for International Telephone and Telegraph (CCITT) and the American National Standards Institute (ANSI).

Switched Access Service: Access to the switched network of an Exchange Carrier for the purpose of originating or terminating communications. Switched Access is available to carriers, as defined in this tariff.

Trunk: A communications path connecting two switching systems in a network, used in the establishment of an end-to-end connection.

Wireless Provider: Any carrier authorized to operate as a provider of cellular, personal communications, paging or any other form of wireless transmission.

SECTION 2 - RULES AND REGULATIONS

2.1 Undertaking of Birch Communications

2.1.1 Scope

The Company's services offered pursuant to this Tariff are furnished for Switched Access Service. The Company may offer these services over its own or resold facilities.

The Company installs, operates, and maintains the communications services provided herein in accordance with the terms and conditions set forth under this Tariff. The Company may act as the Customer's agent for ordering access connection facilities provided by other carriers or entities as required in the Commission's rules and orders, when authorized by the Customer, to allow connection of a Customer's location to the Company network. The Customer shall be responsible for all charges due for such service agreement.

The Company's services and facilities are provided on a monthly basis unless otherwise indicated, and are available twenty-four hours per day, seven days per week.

2.1.2 Shortage of Equipment or Facilities

- A. The Company reserves the right to limit or to allocate the use of existing facilities, or of additional facilities offered by the Company when necessary because of lack of facilities or due to some other cause beyond the Company's control.
- B. The furnishing of service under this tariff is subject to the availability on a continuing basis of all the necessary facilities and is limited to the capacity of the Company's facilities as well as facilities the company may obtain from other Carriers from time to time, to furnish service as required at the sole discretion of the Company.

SECTION 2 - RULES AND REGULATIONS, (CONT'D)

2.1 Undertaking of Access Integrated Networks, (cont'd)

2.1.2 Shortage of Equipment or Facilities, (cont'd)

- C. The provisioning and restoration of service in emergencies shall be in accordance with Part 64, Subpart D, Appendix A of the Federal Communications Commission's Rules and Regulations, which specifies the priority system for such activities.

2.1.3 Terms and Conditions

- A. Except as otherwise provided herein, service is provided and billed on the basis of a minimum period of at least one month, and shall continue to be provided until canceled by the Customer, in writing, on not less than 30 days notice. Unless otherwise specified herein, for the purpose of computing charges in this tariff, a month is considered to have 30 days.
- B. The Customer agrees to operate Company-provided equipment in accordance with instructions of the Company or the Company's agent. Failure to do so will void Company liability for interruption of service and may make the Customer responsible for damage to equipment pursuant to section 2.1.3.C below.

SECTION 2 - RULES AND REGULATIONS, (CONT'D)

2.1 Undertaking of Access Integrated Networks, (cont'd)

2.1.3 Terms and Conditions, (cont'd)

- C. The Customer agrees to return to the Company all Company-provided equipment delivered to Customer within five (5) days of termination of the service in connection with which the equipment was used. Said equipment shall be in the same condition as when delivered to Customer, normal wear and tear only excepted. Customer shall reimburse the Company, upon demand, for any costs incurred by the Company due to Customer's failure to comply with this provision.

2.1.4 Liability of the Company

- A. The liability of the Company for damages arising out of the furnishing of its Services, including but not limited to mistakes, omissions, interruptions, delays, errors, other defects, or representations by the Company, or use of these services or damages arising out of the failure to furnish the service whether caused by act or omission, shall be limited to the extension of allowances for interruption as set forth in 2.6 below. The extension of such allowances for interruption shall be the sole remedy of the Customer and the sole liability of the Company. The Company will not be liable for any direct, indirect, incidental, special, consequential, exemplary or punitive damages to Customer as a result of any Company service, equipment or facilities, or the acts or omissions or negligence of the Company's employees or agents.

SECTION 2 - RULES AND REGULATIONS, (CONT'D)

2.1 Undertaking of Access Integrated Networks, (cont'd)

2.1.4 Liability of the Company, (cont'd)

- B. The Company's liability for willful misconduct, if established as a result of judicial or administrative proceedings, is not limited by this tariff. With respect to any other claim or suit, by a Customer or by any others, for damages associated with the ordering, installation (including delays thereof), provision, termination, maintenance, repair interruption or restoration of any service or facilities offered under this tariff, and subject to the provisions of the Company's liability, if any, shall be limited as provided herein.
- C. The Company shall not be liable for any delay or failure of performance or equipment due to causes beyond its control, including but not limited to: acts of God, fire, flood, explosion or other catastrophes; any law, order, regulation, direction action, or request of The United States government or of any other government, including state and local governments having or claiming jurisdiction over the Company, or of any department, agency, commission, bureau, corporation, or other instrumentality of any one or more of these federal, state, or local governments, or of any military authority; preemption of existing service in compliance with national emergencies; insurrections; riots; wars; unavailability of rights-of-way or materials; or strikes, lockouts work stoppages, or other labor difficulties.

SECTION 2 - RULES AND REGULATIONS, (CONT'D)

2.1 Undertaking of Access Integrated Networks, (cont'd)

2.1.4 Liability of the Company, (cont'd)

- D. The Company shall not be liable for (a) any act or omission of any entity furnishing the Company or the Company's Customers facilities or equipment used for the interconnection with Access Services; or (b) for the acts or omissions of other Common Carriers.
- E. The Company shall not be liable for any damages or losses due to the fault or negligence of the Customer or due to the failure or malfunction of Customer-provided equipment or facilities.
- F. The Customer shall indemnify and hold the Company harmless from any and all loss, claims, demands, suits, or other actions, or any liability whatsoever, whether suffered, made, instituted, or asserted by any other party or person(s), and for any loss, damage, or destruction of any property, whether owned by the Customer or others, caused or claimed to have been caused directly or indirectly by the installation, operation, failure to operate, maintenance, removal, condition, location, or use of any installation or equipment provided by the Company. The Company reserves the right to require each Customer to sign an agreement acknowledging acceptance of the provisions of this Section 2.1.4.F as a condition precedent to such installations.

SECTION 2 - RULES AND REGULATIONS, (CONT'D)

2.1 Undertaking of Access Integrated Networks, (cont'd)

2.1.4 Liability of the Company, (cont'd)

- G. The Company shall not be liable for any defacement of or damage to Customers Premises resulting from the furnishing of services or equipment on such Premises or the installation or removal thereof, unless such defacement or damage is caused by the gross negligence or willful misconduct of the Company's agents or employees. No agents or employees of other participating Carriers shall be deemed to be agents or employees' of the Company.
- H. Notwithstanding the Customer's obligations as set forth in Section 2.3 below, the Company shall be indemnified, defended and held harmless by the Customer, or by others authorized by it to use the service, against any claim, loss or damage arising from Customer's use of services furnished under this tariff, including: claims for libel, slander, invasion of privacy or infringement of copyright arising from the material, data, information, or other content transmitted via the Company's service; and patent infringement claims arising from combining or connecting the service offered by the Company with apparatus and systems of the Customer or others; all other claims arising out of any act or omission of the Customer or others, in connection with any service provided by the Company pursuant to this tariff.
- I. The Company shall be indemnified and held harmless by the End User against any claim, loss or damage arising from the End User's use of services offered under this tariff including: claims for libel, slander, invasion of privacy or infringement of copyright arising from the End User's own communications; patent infringement claims arising

SECTION 2 - RULES AND REGULATIONS, (CONT'D)

2.1 Undertaking of Access Integrated Networks, (cont'd)

2.1.4 Liability of the Company, (cont'd)

- I. (cont'd)
from the End User's combining or connecting the service offered by the Company with facilities or equipment furnished by the End User of another Interexchange Carrier; or all other claims arising out of any act or omission of the End User in connection with any service provided pursuant to this tariff.
- J. The entire liability of the Company for any claim, loss, damage or expense from any cause whatsoever shall in no event exceed sums actually paid to the Company by the Customer for the specific services giving rise to the claim, and no action or proceeding against the Company shall be commenced more than one year after the service is rendered.
- K. The Company makes no warranties or representation, express or implied, including warranties or merchant's ability or fitness for a particular use, except those expressly set forth herein.
- L. The Company does not guarantee nor make any warranty with respect to service installations at locations at which there is present an atmosphere that is explosive, prone to fire, dangerous or otherwise unsuitable for such installations.

SECTION 2 - RULES AND REGULATIONS, (CONT'D)

2.1 Undertaking of Access Integrated Networks, (cont'd)

2.1.4 Liability of the Company, (cont'd)

- M. The Company shall not be liable for the Customer's failure to fulfill its obligations to take all necessary steps including, without limitation, obtaining, installing and maintaining all necessary equipment, materials and supplies, for interconnecting the terminal equipment or communications system of the Customer, or any third party acting as its agent, to the Company's Network. The Customer shall secure all licenses, permits, rights-of-way, and other arrangements necessary for such interconnection. In addition, the Customer shall ensure that its equipment and/or system or that of its agent is properly interfaced with the Company's service, that the signals emitted into the Company's Network are of the proper mode, band-width, power, data speed, and signal level for the intended use of the Customer and in compliance with the criteria set forth in Section 2.1.6 following, and that the signals do not damage Company equipment, injure its personnel or degrade service to other Customers. If the Customer or its agent fails to maintain and operate its equipment and/or system or that of its agent properly, with resulting imminent harm to Company equipment, personnel, or the quality of service to other Customers, the Company, may, upon written notice, require the use of protective equipment at the Customer's expense. If this fails to produce satisfactory quality and safety, the Company may, upon written notice, terminate the Customer's service without liability.

SECTION 2 - RULES AND REGULATIONS, (CONT'D)

2.1 Undertaking of Access Integrated Networks, (cont'd)

2.1.5 Notification of Service-Affecting Activities

The Company will provide the Customer reasonable notification of service-affecting activities that may occur in normal operation of its business. Such activities may include, but are not limited to, equipment or facilities additions, removals or rearrangements and routine preventative maintenance. Generally, such activities are not specific to an individual Customer but affect many Customers' services. No specific advance notification period is applicable to all service activities. The Company will work cooperatively with the Customer to determine the reasonable, notification requirements. With some emergency or unplanned service-affecting conditions, such as an outage resulting from cable damage, notification to the Customer may not be possible.

2.1.6 Provisions of Equipment and Facilities

- A. The Company shall use reasonable efforts to make available services to a Customer on or before a particular date, subject to the provisions of and compliance by the Customer with, the regulations contained in this tariff. The Company does not guarantee availability by any such date and shall not be liable for any delays in commencing service to any Customer.

SECTION 2 - RULES AND REGULATIONS, (CONT'D)

2.1 Undertaking of Access Integrated Networks, (cont'd)

2.1.6 Provisions of Equipment and Facilities, (cont'd)

- B. The Company shall use reasonable efforts to maintain facilities and equipment that it furnishes to the Customer. The Customer may not, nor may the Customer permit others to, rearrange, disconnect, remove, attempt to repair or otherwise interfere with any of the facilities or equipment installed by the Company, except upon the written consent of the Company.
- C. The Company may substitute, change or rearrange any equipment or facility at any time and from time to time, but shall not thereby alter the technical parameters of the service provided the Customer.
- D. Equipment the Company provides or installs at the Customer Premises for use in connection with the services the Company offers shall not be used for any purpose other than that for which the Company provided it.
- E. The Customer shall be responsible for the payment of service charges imposed on the Company by another entity, for visits to the Customer Premises when the service difficulty or trouble report results from the use of equipment or facilities provided by any party other than the Company, including but not limited to the Customer.

SECTION 2 - RULES AND REGULATIONS, (CONT'D)

2.1 Undertaking of Access Integrated Networks, (cont'd)

2.1.6 Provisions of Equipment and Facilities, (cont'd)

- F. The Company shall not be responsible for the installation, operation, or maintenance of any Customer provided communications equipment. Where such equipment is connected to the facilities furnished pursuant to this tariff, the responsibility of the Company shall be limited to the furnishing of facilities offered under this tariff and to the maintenance and operation of such facilities. Notwithstanding the above, the Company shall not be responsible for:
 - 1. the transmission of signals by Customer-provided equipment or for the quality of, or defects in, such transmission;
 - 2. the reception of signals by Customer-provided equipment; or
 - 3. network control signaling where such signaling is performed by Customer-provided network control signaling equipment.
- G. The Company intends to work cooperatively with the Customer to develop network contingency plans in order to maintain maximum network capability following natural or man-made disasters which affect telecommunications services.
- H. The Company reserves the reasonable right to assign, designate or change telephone numbers, any other call number designations associated with Access Services, or the Company serving central office prefixes associated with such numbers, when necessary in the conduct of its business.

SECTION 2 - RULES AND REGULATIONS, (CONT'D)

2.1 Undertaking of Access Integrated Networks, (cont'd)

2.1.7 Non-routine Installation

At the Customer's request, installation and/or maintenance may be performed outside the Company's regular business hours or in unusual locations. In such cases, charges based on cost of the actual labor, material, or other costs incurred by or charged to the Company will apply. If installation is started during regular business hours but, at the Customer's request, extends beyond regular business hours into time periods including, but not limited to, weekends, holidays, and/or night hours, additional charges may apply.

2.1.8 Special Construction

Subject to the arrangement of the Company and to all of the regulations contained in this tariff, special construction of facilities may be undertaken on a reasonable efforts basis at the request of the Customer. Special construction is that construction undertaken and characterized by one or more of the following:

- A. where facilities are not presently available and there is no other requirement for the facilities so constructed;
- B. of a type other than that which the Company would normally utilize in the furnishing of its services;
- C. where facilities are to be installed over a route other than that which the Company would normally utilize in the furnishing of its services;
- D. where facilities are requested in a quantity greater than that which the Company would normally construct;
- E. where installation is on an expedited basis;

SECTION 2 - RULES AND REGULATIONS, (CONT'D)

2.1 Undertaking of Access Integrated Networks, (cont'd)

2.1.8 Special Construction, (cont'd)

- F. on a temporary basis until permanent facilities are available;
- G. installation involving abnormal costs; or
- H. in advance of its normal construction schedules.

Special construction charges for Switched Access Service will be determined on an individual use basis.

2.1.9 Ownership of Facilities

Title to all facilities provided in accordance with this tariff remains in the Company, its agents, contractors or suppliers.

2.2 Prohibited Uses

- 2.2.1 The services the Company offers shall not be used for any unlawful purposes or for any use as to which the Customer has not obtained all required governmental approvals, authorizations, licenses, consents and permits.
- 2.2.2 The Company may require applicants for service who intend to use the Company's offerings for resale and/or for shared use to file a letter with the Company confirming their use of the Company's offerings complies with relevant laws and applicable state regulations, policies, orders, and decisions; and if the Reseller intends to provide intrastate services, is certified with the appropriate state entity.
- 2.2.3 The Company may require a Customer to immediately shut down its transmission of signals if said transmission is causing interference to others.

SECTION 2 - RULES AND REGULATIONS, (CONT'D)

2.3 Obligations of the Customer

2.3.1 The Customer shall be responsible for:

- A. the payment of all applicable charges pursuant to this tariff;
- B. reimbursing the Company for damage to, or loss of, the Company's facilities or equipment caused by the acts or omissions of the Customer; or the noncompliance by the Customer with these regulations; or by fire or theft or other casualty on the Customer Premises, unless caused by the negligence or willful misconduct of the employees or agents of the Company. The Company will, upon reimbursement for damages to its facilities or equipment, cooperate with the Customer in prosecuting a claim against the person causing such damage and the Customer shall be subjugated in the Company's right of recovery of damages to the extent of such payment;
- C. providing at no charge, as specified from time to time by the Company, any needed personnel, equipment, space, and power to operate Company facilities and equipment installed on the Customer Premises, and the level of heating and air conditioning necessary to maintain the proper operating environment on such Premises;
- D. obtaining, maintaining, and otherwise having full responsibility for all rights-of-way and conduit necessary for installation of fiber optic cable and associated equipment used to provide Access Services to the Customer from the cable building entrance or property line to the location of the equipment space described in 2.3.1.C above. Any costs associated with obtaining and maintaining the rights-of-way described herein, including the costs of altering the structure to permit installation of the Company-provided facilities, shall be owned entirely by, or may be charged by the Company to, the Customer. The Company may require the Customer to demonstrate its compliance with this subsection prior to accepting an order for service;

SECTION 2 - RULES AND REGULATIONS, (CONT'D)

2.3 Obligations of the Customer, (cont'd)

2.3.1 The Customer shall be responsible for, (cont'd):

- E. providing a safe place to work and complying with all laws and regulations regarding the working conditions on the Premises at which Company employees and agents shall be installing or maintaining the Company's facilities and equipment. The Customer may be required to install and maintain Company facilities and equipment within a hazardous area if, in the Company's opinion, injury or damage to the Company employees or property might result from installation or maintenance by the Company. The Customer shall be responsible for identifying, monitoring, removing, and disposing of any hazardous material (e.g. asbestos) prior to any construction or installation work;
- F. complying with all laws and regulations applicable to, and obtaining all consents, approvals, licenses, and permits as may be required with respect to, the location of Company facilities and equipment in any Customer Premises or the rights-of-way for which Customer is responsible obtaining under Section 2.3.1.D above; and granting or obtaining permission for Company agents or employees to enter the Customer Premises at any time for the purpose of installing, inspecting, maintaining, repairing, or upon termination of service as stated herein, removing the facilities or equipment of the Company; and
- G. not creating or allowing to be placed or maintained any liens or other encumbrances on the Company's equipment or facilities.

SECTION 2 - RULES AND REGULATIONS, (CONT'D)

2.3 Obligations of the Customer, (cont'd)

2.3.2 Claims

With respect to any service or facility provided by the Company, Customer shall indemnify, defend and hold harmless the Company from all claims, actions, damages, liabilities, costs, and expenses, including reasonable attorneys' fees for:

- A. any loss, destruction or damage to property of the Company or any third party, or the death of or injury to persons, including, but not limited to employees or invitees of either the Company or the Customer, to the extent caused by or resulting from the negligent or intentional act or omission of the Customer, its employees, agents, representatives or invitees;
- B. any claim, loss, damage, expense or liability for infringement of any copyright, patent, trade secret, or any proprietary or intellectual property right of any third party, arising from any act or omission by the Customer, including, without limitation, use of the Company's services and facilities in a manner not contemplated by the agreement between the Customer and the Company.

SECTION 2 - RULES AND REGULATIONS, (CONT'D)

2.3 Obligations of the Customer, (cont'd)

2.3.3 Jurisdictional Reporting

The jurisdictional reporting requirements will be as specified below. When a Customer orders Access Service, its projected Percent Interstate Usage (PIU) must be provided in whole numbers to the Company. These whole number percentages will be used by the Company to apportion the use and/or charges between interstate and intrastate until a revised report is received as set forth herein. Reported or default PIU factors are used only where the call detail is insufficient to determine the appropriate jurisdiction of the traffic.

- A. Originating Access: Originating access minutes consist of traffic originating from the Company Local Switching Center(s). The Customer must provide the Company with a projected PIU factor on a quarterly basis.

If no PIU for originating minutes is submitted as specified herein, a default PIU of 50% will be applied by the Company.

- B. Terminating Access: Terminating access minutes consist of traffic terminating to the Company Local Switching Center(s). The Customer must provide the Company with a projected PIU factor on a quarterly basis.

If no PIU for terminating minutes is submitted as specified herein, a default PIU of 50% will be applied by the Company.

- C. Except where the Company measured access minutes are used as set forth above, the Customer reported Projected PIU factor as set forth above will be used until the Customer reports a different projected PIU factor, as set forth below.

SECTION 2 - RULES AND REGULATIONS, (CONT'D)

2.3 Obligations of the Customer, (cont'd)

2.3.3 Jurisdictional Reporting, (cont'd)

- D. Effective on the first of January, April, July and October of each year the Customer shall update its interstate and intrastate jurisdictional report. The Customer shall forward to the Company, to be received no later than 15 days after the first of each such month, a revised report showing the interstate and intrastate percentage of use for the past three months ending the last day of December, March, June, and September, respectively, for each service arranged for interstate use, based solely on the traffic originating from or terminating to the Company Local Switching Center. The revised report will serve as the basis for the next three months' billing and will be effective on the bill date for that service. If the Customer does not supply the reports for those services where reports are needed, the Company will assume the percentage to be the same as that provided previously. For those cases in which a quarterly report has never been received from the Customer, the Company will assume the percentages to be the same as those provided in the Access Service Request.
- E. Jurisdictional Reports Verification: For Switched Access Service, if a billing dispute arises or a regulatory commission questions the projected PIU factor, the Customer will provide the data issued to determine the projected PIU factor. The Customer will supply the data within 30 days of the Company request.

The Customer shall keep records of call detail from which the percentage of interstate and intrastate use can be ascertained and, upon request of the Company, shall make the records available for inspection as reasonably necessary for purposes of verification of the percentages. The Company reserves the right to conduct an audit at any time during the year. The Customer, at its own expense, has the right to retain an independent auditing firm.

SECTION 2 - RULES AND REGULATIONS, (CONT'D)

2.4 Customer Equipment and Channels

2.4.1 General

A Customer may transmit or receive information or signals via the facilities of the Company.

2.4.2 Station Equipment

A The Customer is responsible for providing and maintaining any terminal equipment on the Customer Premises. The electric power consumed by such equipment shall be provided by, and maintained at the expense of, the Customer. All such terminal equipment must be registered with the FCC under 47 C.F.R., Part 68 and all wiring must be installed and maintained in compliance with those regulations. The Company will, where practicable, notify the Customer that temporary discontinuance of the use of a service may be required; however, where prior notice is not practicable, nothing contained herein shall be deemed to impair the Company's right to discontinue forthwith the use of a service temporarily if such action is reasonable under the circumstances.

SECTION 2 - RULES AND REGULATIONS, (CONT'D)

2.4 Customer Equipment and Channels, (cont'd)

2.4.2 Station Equipment, (cont'd)

A. (cont'd)

In case of such temporary discontinuance, the Customer will be promptly notified and afforded the opportunity to correct the condition which gave rise to the temporary discontinuance. During such period of temporary discontinuance, credit allowance for service interruptions as set forth in Section 2.6 following is not applicable.

- B. The Customer is responsible for ensuring that Customer-provided equipment connected to Company equipment and facilities is compatible with such equipment and facilities. The magnitude and character of the voltages and currents impressed on Company-provided equipment and wiring by the connection, operation, or maintenance of such equipment and wiring shall be such as not to cause damage to the Company-provided equipment and wiring or injury to the Company's employees or other persons. Any additional protective equipment required to prevent such damage or injury shall be provided by the Company at the Customer's expense.

2.4.3 Interconnection of Facilities

- A. Any special interface equipment necessary to achieve compatibility between the facilities and equipment of the Company used for furnishing Access Services and the Channels, facilities, or equipment of others shall be provided at the Customer's expense.
- B. Access Services may be connected to the services or facilities of other communications carriers only when authorized by, and in accordance with, the terms and conditions of the tariffs of the other communications carriers which are applicable to such connections.

SECTION 2 - RULES AND REGULATIONS, (CONT'D)

2.4 Customer Equipment and Channels, (cont'd)

2.4.4 Inspections

- A. Upon reasonable notification of the Customer, and at reasonable times, the Company may make such tests and inspections as may be necessary to determine that the Customer is complying with the requirements set forth in Section 2.4.2.B for the installation, operation, and wiring in the connection of Customer-provided facilities and equipment to Company-owned facilities and equipment. No credit will be allowed for any interruptions occurring during such inspections.
- B. If the protective requirements for Customer-provided equipment are not being complied with, the Company may take such action as it deems necessary to protect its facilities, equipment, and personnel. The Company will notify the Customer promptly if there is any need for further corrective action. Within ten days of receiving this notice, the Customer must take this corrective action and notify the Company of the action taken. If the Customer fails to do this, the Company may take whatever additional action is deemed necessary, including the suspension of service, to protect its facilities, equipment, and personnel from harm. The Company will, upon request 24 hours in advance, provide the Customer with a statement of technical parameters that the Customer's equipment must meet.

2.5 Payment Arrangements

2.5.1 Payment for Service

The Customer is responsible for payment of all charges for services and facilities furnished by the Company to the Customer or its Joint or Authorized Users.

SECTION 2 - RULES AND REGULATIONS, (CONT'D)

2.5 Payment Arrangements, (cont'd)

2.5.1 Payment for Service, (cont'd)

A. Taxes

The Customer is responsible for the payment of any sales, use, gross receipts, excise, access or other local, state and federal taxes, charges or surcharges (however designated) excluding taxes on the Company's net income imposed on or based upon the provision, sale or use of Access Services. All such taxes shall be separately designated on the Company's invoices.

2.5.2 Billing and Collection of Charges

Unless otherwise specified herein, bills are due and payable upon receipt.

The Company shall bill on a current basis* all charges incurred by, and credits due to, the Customer under this tariff attributable to services established, provided, or discontinued during the preceding billing period.

(C)

Non-Recurring Charges are due and payable within 25 days after the invoice date.

The Company shall present invoices for all Charges monthly to the Customer.

Amounts not paid within 30 days after the date of invoice will be considered past due. The Company will assess a late payment charge equal to 1.5% per month for any past due balance that exceeds 30 days. If the Company becomes concerned at any time about the ability of a Customer to pay its bills, the Company may require that the Customer pay its bills within a specified number of days and make such payments in cash or the equivalent of cash.

If a service is disconnected by the Company in accordance with Section 2.5.3 following and later restored, restoration of service will be subject to all applicable installation charges.

*For avoidance of any doubt, "current" means that the Company will, to the best of its ability, bill customers in the same month as the bill cycle date. The current month's invoice may contain charges for usage periods more than one month in arrears.

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SECTION 2 - RULES AND REGULATIONS, (CONT'D)

2.5 Payment Arrangements, (cont'd)

2.5.2 Billing and Collection of Charges, (cont'd)

The Customer shall notify the Company of any disputed items on an invoice within 90 days of receipt of the invoice. If the Customer and the Company are unable to resolve the dispute to their mutual satisfaction, the Customer may file a complaint with the Commission in accordance with the Commission's rules of procedures.

2.5.3 Refusal and Discontinuance of Service

- A. Upon nonpayment of any amounts owing to the Company, the Company may, by giving requisite prior written notice to the Customer discontinue or suspend service without incurring any liability.
- B. Upon violation of any of the other material terms or conditions for furnishing service the Company may, by giving 30 days' prior notice in writing to the Customer, discontinue or suspend service without incurring any liability if such violation continues during that period.
- C. Upon condemnation of any material portion of the facilities used by the Company to provide service to a Customer or if a casualty renders all or any material portion of such facilities inoperable beyond feasible repair, the Company, by notice to the Customer, may discontinue or suspend service without incurring any liability.
- D. Upon any governmental prohibition, or required alteration of the services to be provided or any violation of an applicable law or regulation, the Company may immediately discontinue service without incurring any Liability.

SECTION 2 - RULES AND REGULATIONS, (CONT'D)

2.5 Payment Arrangements, (cont'd)

2.5.3 Refusal and Discontinuance of Service, (cont'd)

- E. Upon the Company's discontinuance of service to the Customer under Section 2.5.3.A or 2.5.3.B above, the Company, in addition to all other remedies that may be available to the Company at law or in equity or under any other provision of this tariff, may declare all future monthly and other charges which would have been payable by the Customer during the remainder of the term for which such services would have otherwise been provided to the Customer to be immediately due and payable.
- F. The Company may discontinue the furnishings of any and/or all service(s) to Customer, without incurring any liability:
 - 1. Immediately and without notice if the Company deems that such action is necessary to prevent or to protect against fraud or to otherwise protect its personnel, agents, facilities or services. The Company may discontinue service pursuant to this sub-section 2.5.3.F.1.(a-f), if
 - (a) The Customer refuses to furnish information to the Company regarding the Customer's credit-worthiness, its past or current use of Common Carrier communications services or its planned use of service(s); or
 - (b) The Customer provides false information to the Company regarding the Customer's identity, address, credit-worthiness, past or current use of Common Carrier communications services, or its planned use of the Company's service(s); or

SECTION 2 - RULES AND REGULATIONS, (CONT'D)

2.5 Payment Arrangements, (cont'd)

2.5.3 Refusal and Discontinuance of Service, (cont'd)

F. (cont'd)

1. (cont'd)

- (c) The Customer states that it will not comply with a request of the Company for security for the payment for service(s) in accordance with Section 2.5.3.A above; or
 - (d) The Customer has been given written notice by the Company of any past due amount (which remains unpaid in whole or in part) for any of the Company's other Common Carrier communications services to which the Customer either subscribes or had subscribed or used; or
 - (e) The Customer uses, or attempts or use, service with the intent to void the payment, either in whole or in part, of the tariff charges for the service by:
 - I. Using or attempting to use service by rearranging, tampering with, or making connections to the Company's service not authorized by this tariff, or
 - II. Using tricks, schemes, false or invalid numbers, false credit devices, electronic devices: or
 - III. Any other Fraudulent means or devices; or
2. Upon ten (10) days' written notice to the Customer of any sum thirty (30) days past due;

SECTION 2 - RULES AND REGULATIONS, (CONT'D)

2.5 Payment Arrangements, (cont'd)

2.5.3 Refusal and Discontinuance of Service, (cont'd)

F. (cont'd)

3. Upon ten (10) days' written notice to the Customer, after failure of the Customer to comply with a request made by the Company for security for the payment of service in accordance with Section 2.5.3.A, above; or
4. Seven (7) days after sending the Customer written notice of noncompliance with any provision of this tariff if the noncompliance is not corrected within that seven (7) day period. The discontinuance of service(s) by the Company pursuant to this Section does not relieve the Customer of any obligation to pay the Company for charges due and owing for service(s) furnished up to the time of discontinuance.

- G. In the event the Company incurs fees or expenses, including attorney's fees, in collecting, or attempting to collect, any charges owed the Company, the Customer will be liable to the Company for the payment of all such fees and expenses reasonably incurred.

2.5.4 Cancellation of Application for Service

Where, prior to cancellation by the Customer, the Company incurs any expenses in installing the service or in preparing to install the service that it otherwise would not have incurred, a charge equal to the costs the Company incurred, less net salvage, shall apply, but in no case shall this charge exceed the sum of the charge for the minimum period of services ordered, including installation charges, and all charges others levy against the company that would have been chargeable to the Customer had service begun.

SECTION 2 - RULES AND REGULATIONS, (CONT'D)

2.5 Payment Arrangements, (cont'd)

2.5.4 Cancellation of Application for Service, (cont'd)

The special charges described will be calculated and applied on a case-by-case basis.

2.6 Allowances for Interruptions in Service

Interruptions in service which are not due to the negligence of or noncompliance with the provisions of this tariff by, the Customer or the operation or malfunction of the facilities, power, or equipment provided by the Customer, will be credited to the Customer as set forth in 2.6.1 for the part of the service that the interruption affects.

The credit allowance will be calculated by the Company after the Customer notifies the Company of service interruption. The amount of the allowance will depend on the length of the outage and the service impacted. Service Outage conditions are defined as complete loss of call origination and/or receipt capability. Credit Allowances, if any, will be deducted from the charges payable by the IXC and will be expressly indicated on the next invoice. A Service Outage begins when the IXC reports the outage to the Company. A Service Outage ends when the affected circuit and/or associated Company equipment is fully operational in accordance with the technical specifications.

Credit allowances do not apply to outages (i) caused by the IXC; (ii) due to failure of equipment provided by the IXC; (iii) during any period in which the Company is not given access to the service premises; (iv) failures of LEC facilities or equipment which are carrying the failures resulting from the activities or negligence of LEC employees; (v) inability to gain access to the IXC's equipment; and (vii) due to mutually agreed upon maintenance and repair.

Credit Allowances received by the Company from the LEC for Off-Net facility outages which affects the IXC's Switched Services will be passed through to the IXC in the form of a credit on the next invoice.

SECTION 2 - RULES AND REGULATIONS, (CONT'D)

2.6 Allowances for Interruptions in Service, (cont'd)

2.6.1 Limitations on Allowances

No credit allowance will be made for:

- A. interruptions due to the negligence of, or noncompliance with the provisions of this tariff by, the Customer, Authorized User, Joint-User, or other Common Carrier providing service connected to the service of Company;
- B. interruptions due to the negligence of any person other than the Company, including, but not limited to, the Customer or other Common Carriers connected to the Company's facilities;
- C. interruptions due to the failure or malfunction of non-Company equipment;
- D. interruptions of service during any period in which the Company is not given full and free access to its facilities and equipment for the purpose of investigating and correcting interruptions;
- E. interruptions of service during a period in which the Customer continues to use the service on an impaired basis;
- F. interruptions of service during any period when the Customer has released service to the Company for maintenance purposes or for implementation of a Customer order for a change in service arrangements;
- G. interruption of service due to circumstances or causes beyond the control of the Company.

SECTION 2 - RULES AND REGULATIONS, (CONT'D)

2.7 Transfers and Assignments

Neither the Company nor the Customer may assign or transfer its rights or duties in connection with the services and facilities provided by the Company without the written consent of the other party, except that the Company may assign its rights and duties (a) to any subsidiary, parent Company or affiliate of the Company (b) pursuant to any sale or transfer of substantially all the assets of the Company; or pursuant to any financing, merger or reorganization of the Company.

2.8 Notices and Communications

2.8.1 The Customer shall designate on the Service Order, or equivalent, an address to which the Company shall mail or deliver all notices and other communications, except that the Customer may also designate a separate address to which the Company's bills for service shall be mailed.

2.8.2 The Company shall designate on the Service Order, or equivalent, an address to which the Customer shall mail or deliver all notices and other communications, except that the Company may designate a separate address, on each bill for service, to which the Customer shall mail payment on that bill.

2.8.3 All notices or other communications required to be given pursuant to this tariff shall be in writing. Notices and other communications of either party, and all bills mailed by the Company, shall be presumed to have been delivered to the other party on the third business day following deposit of the notice, communication, or bill with the U.S. Mail or a private delivery service, prepaid and properly addressed, or when actually received or refused by the addressee, whichever occurs first.

2.8.4 The Company or the Customer shall advise the other party of any changes to the addresses designated for notices, other communications or billing, by following the procedures for giving notice set forth herein.

2.9 Meet Point Billing

Meet Point Billing applies when more than one Exchange Telephone Company is involved in the provision of Access Service. All recurring and nonrecurring charges for services provided by each Exchange Telephone Company are billed under each company's applicable rates as set forth below.

The Company accepts and adheres to the Ordering and Billing Forum guidelines, Multiple Exchange Carrier Access Billing (MECAB) and Multiple Exchange Carrier Ordering and Design (MECOD).

SECTION 2 - RULES AND REGULATIONS, (CONT'D)

2.10 Other Rules

If any provision, rate or term of this Tariff shall be held to be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render any other provision, rate or term of this Tariff unenforceable, but rather this Tariff shall be construed as if not containing the invalid or unenforceable provision, rate or term.

(N)
|
|
|
|
(N)

SECTION 3 - ORDERING OPTIONS FOR ACCESS SERVICE

3.1 General

This section sets forth the regulations and order related charges for Access Service Requests (ASR) for Switched Access Service, as defined in this tariff. These charges are in addition to other applicable charges set forth in other sections of this tariff.

3.1.1 Ordering Conditions

Unless otherwise specified herein, all services offered under this tariff shall be ordered using an ASR. The format and terms of the ASR will be as specified in the industry Access Service Order Guidelines, unless otherwise specified herein. A Customer may order any number of services of the same type and between the same premises on a single ASR. All details for services for a particular order must be identical.

The Customer shall provide all information necessary for the Company to provide and bill for the requested service. When placing an order for Access Service, the Customer shall provide the following minimum information:

- A. Customer name and Premise(s) address(es);
- B. Billing name and address (when different from Customer name and address); and
- C. Customer contact name(s) and telephone number(s) for the following provisioning activities: order negotiation, order confirmation, interactive design, installation and billing.

3.1.2 Provision of Other Services

Unless otherwise specified herein, all services offered under this tariff shall be ordered with an ASR.

SECTION 3 - ORDERING OPTIONS FOR ACCESS SERVICE, (CONT'D)

3.1 General, (cont'd)

3.1.2 Provision of Other Services, (cont,d)

With the agreement of the Company, other services may subsequently be added to the ASR at any time, up to and including the service date for the Access Service.

3.2 Access Order

When a Customer requests new or additional Switched Access Service, one or more ASR's may be required. The number of orders required is dependent on the type of services and/or facilities being requested.

3.2.1 Access Service Date Intervals

Access Service is provided with one of the following Service Date intervals:

- Standard Interval
- Negotiated Interval

The Company will specify a FOC and the Service Commencement Date contingent on the ASR being complete as received. To the extent the Access Service can be made available with reasonable effort, the Company will provide the Access Service in accordance with the Customer's requested interval, subject to the following conditions:

A. Standard Interval

The Standard Interval for Switched Service will be 10 business days from the Application Date. This interval only applies to standard service offerings for a Customer which is On-Net and at locations where there are pre-existing facilities to the Customer Premises. Access Services provided under the Standard Interval will be installed during Company business hours.

SECTION 3 - ORDERING OPTIONS FOR ACCESS SERVICE, (CONT'D)

3.2 Access Order, (cont'd)

3.2.1 Access Service Date Intervals, (cont'd)

B. Negotiated Interval: The Company will negotiate a Service Date interval with the Customer when:

1. The Customer requests a Service Date before or beyond the applicable Standard Interval Service Date; or
2. There is no existing facility connecting the Customer Premises with the Company; or
3. The Customer requests a service that is not considered by the Company to be a standard service offering (for example, if Additional Engineering is required to complete the order); or
4. The Company determines that Access Service cannot be installed within the Standard Interval.

The Company will offer a Service Date based on the type and quantity of Access Services the Customer has requested. The Negotiated Interval may not exceed by more than six months the Standard Interval Service Date, or, when there is no Standard Interval, the Company offered Service Date.

All services for which rates are applied on an Individual Case Basis are provided with a Negotiated Interval.

SECTION 3 - ORDERING OPTIONS FOR ACCESS SERVICE, (CONT'D)

3.2 Access Order, (cont'd)

3.2.2 Access Service Request Modifications

The Customer may request a modification of its ASR prior to the Service Commencement Date. All modifications must be in writing using the industry ASR process. The Company, in its sole discretion, may accept a verbal modification from the Customer. The Company will make every effort to accommodate a requested modification when it is able to do so with the normal work force assigned to complete such an order within normal business hours.

3.2.3 Minimum Period of Service

The minimum period for which Access Service is provided and for which charges are applicable is one month.

A. The following changes will be treated as a discontinuance of the existing service and a request for installation of a new service. All associated Non-Recurring Charges will apply for the new service, and a new minimum period will be established:

1. A change in the identity of the Customer of record; or
2. A move by the Customer to a different building.

B. When Access Service is disconnected prior to the expiration of the minimum period, charges are applicable for the balance of the minimum period. The Minimum Period Charge for monthly billed services will be determined as follows:

For Switched Access Service, the charge for a month or fraction thereof is equivalent to 50,000 billed minutes of use for the applicable service.

All applicable Non-Recurring Charges for the service will be billed in addition to the Minimum Period Charge.

SECTION 3 - ORDERING OPTIONS FOR ACCESS SERVICE, (CONT'D)

3.3 Supplementary Charges

| | |
|--|------------------------------|
| Customer Requested Due Date Change ^{1, 2} | \$50, per order |
| Customer Requested Expedite ² | \$250, per location |
| Cancellation (after 3 business days from order placement) ² | Full NRCs + \$250, per order |
| Design Change, DS0/DS1 ² | \$150, per circuit |
| Design Change, DS3 and higher ² | \$300, per circuit |
| Administrative Processing ² | \$25, per order |

¹ Company Due Date Change Policy - No due date change accepted at or after four (4) days prior to the current due date. If a Customer request is received during that time period, the supplemental charge will apply and, in addition, the billing will start on the current due date without exception.

² For services involving facilities leased from other telecommunications providers, Supplementary Charges will be priced on an Individual Case Basis, and will be based upon a pass-through of all charges assessed by other providers, and the Company's administrative costs.

SECTION 4 - SWITCHED ACCESS SERVICE

4.1 General

Switched Access Service, which is available to Customers for their use in furnishing their services to end users, provides a two-point communications path between a Customer's Premises and an End User's Premises. It provides for the use of common terminating, switching and transport facilities. Switched Access Service provides the ability to originate calls from an End User's Premises to a Customer's Premises, and to terminate calls from a Customer's Premises to an End User's Premises.

Switched Access Service is available when originating or terminating calls from or to an end user which subscribes to the Company's Local Exchange Services.

Rates and charges are set forth in Section 5. The application of rates for Switched Access Service is described in Section 5.

4.2 Provision and Description of Switched Access Service Arrangements

4.2.1 Feature Group Access

FG Access is provisioned at the DS-1 level and provides trunk-side access to Local Switching Center switches, for the Customer's use in originating and terminating communications. Basic FG Access service will be provided with Multi-Frequency In Band Signaling (SS7 is also available, where capabilities exist).

Two types of Feature Group Access are available:

- 1) Tandem Connect Access: This option applies when the customer has no direct facilities to the End Office. Traffic is routed to and from the End Office via the Access Tandem. Delivery of calls to, or acceptance of calls from, the Customer's End User location(s) via Company-provided Tandem Connect Access services shall constitute a Constructive Order and an agreement by the Customer to purchase the Company's switched access services as described and priced herein.
- 2) Direct Connect Access: This option applies when the Company or another service provider provides dedicated facilities between the Customer's premises and the End Office. This transmission path is dedicated to the use of a single Customer. The Company requires the Customer to submit an ASR or comparable documentation for the dedicated portion of Direct Connect Access. The dedicated portion of Direct Connect Access is provided on an Individual Case Basis as Special Service Arrangements pursuant to Section 8 of this tariff.

SECTION 4 - SWITCHED ACCESS SERVICE, (CONT'D)

4.2 Provision and Description of Switched Access Service Arrangements, (cont'd)

4.2.2 Manner of Provision

Trunks used for Switched Access Service may be configured for one-way (either originating only or terminating only) or for two-way directionality. It is the Customer's responsibility to provide the Company with a usage demand estimate for the first 3 months of service. This demand estimate should be included with the access order information.

4.2.3 Call Types

The following Switched Access Service call types are available:

- A. Originating 101XXXX FG Access
- B. Originating 800 FG Access
- C. Terminating FG Access

4.2.4 Originating 101XXXX FG Access

The access code for FG Access switching is a uniform access code of the form 101XXXX. A single access code will be the assigned number of all FG Access provided to the Customer by the Company. When the access code is used, FG Access switching also provides for dialing the digit 0 for access to the Customer's operator service, 911 for access to emergency service, and/or the end of dialing digit (#) for cut-through access to the Customer's premises.

SECTION 4 - SWITCHED ACCESS SERVICE, (CONT'D)

4.2 Provision and Description of Switched Access Service Arrangements, (cont'd)

4.2.5 Originating 800 FG Access

800 Data Base Access Service is a service offering utilizing originating Trunk side Switched Access Service. When an 8XX + NXX + XXXX call is originated by an End User, the Company will perform Customer identification based on screening of the full ten-digits of the 8XX number to determine the Customer location to which the call is to be routed.

4.2.6 Terminating FG Access

FG Access, when used in the terminating direction, may only be used to access end users who are subscribing to the Company's Local Exchange Services. Calls in the terminating direction will not be completed to 950-0XXX or 950-1XXX access codes, local operator assistance (0- and 0+), Directory Assistance, (411 or 555-1212) service codes 611 and 911 and 101XXXX access codes.

4.3 Reports and Testing

4.3.1 Design Layout Report: At the request of the Customer, the Company will provide to the Customer the makeup of the facilities and services provided from the Customer's Premises to the first point of switching. This information will be provided in the form of a Design Layout Report. The Design Layout Report will be provided to the Customer at no charge.

4.3.2 Acceptance Testing: At no additional charge, the Company will, at the Customer's request, cooperatively test, at the time of installation, the following parameters: loss, C-notched noise, C-message noise, 3-tone slope, d.c. continuity and operational signaling.

SECTION 5 - SWITCHED ACCESS RATES

5.1 General

This section contains the specific regulations governing the rates and charges that apply for Switched Access Services:

There are three types of rates and charges that apply to Switched Access Service:

- Non-Recurring Charges: One-time charges that apply for a specific work activity.
- Recurring Charges: Fixed charges apply each month and depend on the number and type of facilities in place.
- Usage Charges: Charges that are applied on a per access minute basis. Usage rates are accumulated over a monthly period.

SECTION 5 - SWITCHED ACCESS RATES, (CONT'D)

5.2 Rate Categories

There are three rate categories which apply to Switched Access Service:

- End Office Switching (includes Common Line and Switched Transport)
- Toll-Free 8XX Data Base Access Service
- Optional Features

5.2.1 End Office Switching

The Company combines traditional per minute switched access rate elements into a single composite per minute rate element. The composite rate element includes the following access components:

A. Common Line

The Common Line component is related to the use of Company-provided end user common lines, and the terminations in the end office of end user lines, by customers and end users for intrastate access.

B. Switched Transport

The Switched Transport component is related to the transmission and tandem switching facilities between the customer designated premises and the end office switch(es) where the customer's traffic is switched to originate or terminate the customer's communications. The Switched Transport component also includes transport between an end office which serves as host for a remote switching system or module (RSS or RSM) and the RSS or RSM or its equivalent.

The terminating switched transport rate schedules are bifurcated into "3rd Party" and "End Office" rates. The Company bills the End Office terminating switched transport rates, in accordance with Commission Rules 51.907(g)(2) and 51.907(g), for "terminating traffic traversing a tandem switch that the terminating carrier or its affiliates owns." All other terminating switched transport traffic is billed the 3rd Party terminating switched transport rates. (N)

C. End Office Switching

The End Office Switching component is related to the use of end office switching equipment, the terminations of calls at Company Intercept Operators or recordings, the Signaling Transfer Point (STP) costs, and the SS7 signaling function between the end office and the STP.

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SECTION 5 - SWITCHED ACCESS RATES, (CONT'D)

5.2 Rate Categories, (cont'd)

5.2.4 Toll-Free 8XX Data Base Query

The Toll-Free 8XX Data Base Query Charge, will apply for each Toll-Free 8XX call query received at the Company's (or its provider's) Toll-Free 8XX data base.

5.2.5 Switched Access Optional Features

Following are the various optional features that are available, where the technical capability exists:

- (a) Supervisory Signaling
- (b) Alternate Traffic Routing
- (c) Cut-Through
- (d) Service Class Routing
- (e) FGD with 950 Access
- (f) Signaling System Seven (SS7)
- (g) Basic Initial Address Message Delivery
- (h) Called Directory Number Delivery
- (i) Flexible Automatic Number Identification Delivery

Other optional features may be available on an Individual Case Basis (ICB).

SECTION 5 - SWITCHED ACCESS RATES, (CONT'D)

5.3 Billing of Access Minutes

When recording originating calls over FG Access with multi-frequency address signaling, usage measurement begins when the first wink supervisory signal is forwarded from the Customer's facilities. The measurement of originating call usage over FG Access ends when the originating FG Access entry switch receives disconnect supervision from either the originating End User's Local Switching Center - (indicating that the originating End User has disconnected), or the Customer's facilities, whichever is recognized first by the entry switch.

For terminating calls over FG Access with multi-frequency address signaling, the measurement of access minutes begins when a seizure signal is received from the Carrier's trunk group at the Point of Presence within the LATA. The measurement of terminating call usage over FG Access ends when a disconnect signal is received, indicating that either the originating or terminating user has disconnected.

When recording originating calls over FG Access with SS7 signaling, usage measurement begins with the transmission of the initial address message by the switch for direct trunk groups and with the receipt of an exit message by the switch for tandem trunk groups. The measurement of originating FG Access usage ends when the entry switch receives or sends a release message, whichever occurs first.

For terminating calls over FG Access with SS7 signaling, the measurement of access minutes begins when the terminating recording switch receives the initial address message from the terminating End User. On directly routed trunk groups or on tandem routed trunk groups, the Company switch receives the initial address message and sends the indication to the Customer in the form of an answer message. The measurement of terminating FG Access call usage ends when the entry switch receives or sends a release message, whichever occurs first.

SECTION 5 - SWITCHED ACCESS RATES, (CONT'D)

5.4 Rates and Charges

5.4.1 Common Line Access Service

A. Carrier Common Line Charge

- Per Originating Minute

Note 1

- Per Terminating Minute

Note 1

Note 1: All access minutes are billed at a single per minute access rate found in Section 5.4.3.A, Local Switching. This composite rate includes the elements traditionally billed as Carrier Common Line.

SECTION 5 - SWITCHED ACCESS RATES, (CONT'D)

5.4 Rates and Charges, (cont'd)

5.4.2 Switched Transport

| | | | | |
|----|-------------------------------|---------------------------------------|---------------------|------------------------------|
| A. | Entrance Facility | | <u>Nonrecurring</u> | <u>Monthly Recurring</u> |
| | | First DS1 | ICB | ICB |
| | | Additional DS1s | ICB | ICB |
| B. | Direct-Trunked Transport | | <u>Nonrecurring</u> | <u>Monthly Recurring</u> |
| | 1. | Direct Transport | | |
| | | Per DS1 | ICB | ICB |
| | | Per DS1, per Mile | ICB | ICB |
| | 2. | Dedicated Trunk Port | | |
| | | Per DS1 Port | ICB | ICB |
| | | | | |
| C. | Common Transport | | | |
| | 1. | Installation | | <u>Nonrecurring</u> |
| | | First Trunk | | ICB |
| | | Additional Trunks | | ICB |
| | 2. | Tandem Switched, per Minute | | Note 1 |
| | 3. | Tandem Switched, per Minute, per Mile | | Note 1 |
| | 4. | Tandem Switching, per Minute | | Note 1 |
| | 5. | Common Multiplexing, per Minute | | Note 1 |
| 6. | Common Trunk Port, per Minute | | Note 1 | |

Note 1: All access minutes are billed at a single per minute access rate found in Section 5.4.3A, Local Switching. This composite rate includes the elements traditionally billed as Common Transport.

SECTION 5 - SWITCHED ACCESS RATES, (CONT'D)

5.4 Rates and Charges, (cont'd)

5.4.2 Switched Transport, (cont'd)

D. Transport Interconnection Charge

1. Originating, per Minute

Note 1

Note 1: All access minutes are billed at a single per minute access rate found in Section 5.4.3A, Local Switching. This composite rate includes the elements traditionally billed as Transport Interconnection Charge and Information Surcharge.

SECTION 5 - SWITCHED ACCESS RATES, (CONT'D)

5.4 Rates and Charges, (cont'd)

5.4.3 End Office Switching

A. Local Switching

1. Service Provided via Commercial Agreement

(T)

Per Minute

| | Tandem Connect | | | Direct Connect | | |
|--|----------------|-----------------------|----------------|----------------|-----------------------|----------------|
| | Originating | Terminating | | Originating | Terminating | |
| | | 3 rd Party | End Office | | 3 rd Party | End Office |
| AT&T (former BellSouth) areas | \$0.005695 | \$0.00220880 R | \$0.00070000 R | \$0.002962 | \$0.00027580 R | \$0.00000000 R |
| AT&T (former SBC) areas | \$0.004006 | \$0.00054335 R | \$0.00070000 R | \$0.002682 | \$0.00011935 R | \$0.00000000 R |
| AT&T (former PacBell) areas | | | | | | |
| Zone 1 | \$0.008578 | \$0.00126235 R | \$0.00044000 R | \$0.003089 | \$0.00046935 R | \$0.00000000 R |
| Zone 2 | \$0.009430 | \$0.00211425 R | \$0.00070000 R | \$0.003164 | \$0.00054425 R | \$0.00000000 R |
| Zone 3 | \$0.010481 | \$0.00316480 R | \$0.00070000 R | \$0.003169 | \$0.00054880 R | \$0.00000000 R |
| AT&T (former Ameritech) areas | | | | | | |
| Zone 1 | \$0.005207 | \$0.00158970 R | \$0.00070000 R | \$0.003478 | \$0.00023170 R | \$0.00000000 R |
| Zone 2 | \$0.005253 | \$0.00163570 R | \$0.00070000 R | \$0.003478 | \$0.00023170 R | \$0.00000000 R |
| Zone 3 | \$0.005260 | \$0.00164270 R | \$0.00070000 R | \$0.003478 | \$0.00023170 R | \$0.00000000 R |
| Zone 4 | \$0.005394 | \$0.00177670 R | \$0.00070000 R | \$0.003478 | \$0.00023170 R | \$0.00000000 R |
| Zone 5 | \$0.005944 | \$0.00232670 R | \$0.00070000 R | \$0.003478 | \$0.00023170 R | \$0.00000000 R |
| CenturyLink (former Qwest) areas | | | | | | |
| Zone 1 | \$0.006080 | \$0.00309800 R | \$0.00070000 R | \$0.002445 | \$0.00021000 R | \$0.00000000 R |
| Zone 2 | \$0.006080 | \$0.00309800 R | \$0.00070000 R | \$0.002445 | \$0.00021000 R | \$0.00000000 R |
| Zone 3 | \$0.006080 | \$0.00297200 R | \$0.00070000 R | \$0.002445 | \$0.00029720 R | \$0.00000000 R |
| Verizon areas ¹ (CT, MA, NY, RI) | \$0.005692 | \$0.00159800 R | \$0.00070000 R | \$0.002406 | \$0.00000000 R | \$0.00000000 R |
| Verizon areas ¹ (DC, DE, MD, NJ, PA, VA) | \$0.005692 | \$0.00159800 R | \$0.00070000 R | \$0.002406 | \$0.00000000 R | \$0.00000000 R |
| Fairpoint areas | \$0.005495 | \$0.00163600 R | \$0.00070000 R | \$0.002264 | \$0.00000000 R | \$0.00000000 R |
| Frontier WV (former Verizon) areas | \$0.005562 | \$0.00170800 R | \$0.00071700 R | \$0.002273 | \$0.00000000 R | \$0.00000000 R |
| Frontier (former SNET areas) | \$0.005872 | \$0.00133895 R | \$0.00079496 R | \$0.003657 | \$0.00052395 R | \$0.00007896 R |
| CenturyLink (NV) areas | | | | | | |
| Zone 1 | \$0.007604 | \$0.00285660 R | \$0.00070000 R | \$0.004593 | \$0.00020860 R | \$0.00000000 R |
| Zone 2 | \$0.007708 | \$0.00296055 R | \$0.00070000 R | \$0.004606 | \$0.00022155 R | \$0.00000000 R |
| Zone 3 | \$0.007952 | \$0.00320500 R | \$0.00070000 R | \$0.004629 | \$0.00024500 R | \$0.00000000 R |
| Hawaiian Tel areas | | | | | | |
| Zone 1 | \$0.00494933 | \$0.00207260 R | \$0.00070000 R | \$0.00228393 | \$0.00021700 R | \$0.00000000 R |
| Zone 2 | \$0.00494933 | \$0.00194260 R | \$0.00070000 R | \$0.00228393 | \$0.00021700 R | \$0.00000000 R |
| Zone 3 | \$0.00494933 | \$0.00181260 R | \$0.00070000 R | \$0.00228393 | \$0.00021700 R | \$0.00000000 R |

(C)

(C)

¹Equivalent to Verizon's "Composite Terminating End Office Charge"

Some material previously found on this sheet is now found on Original Sheet 56.1

SECTION 5 - SWITCHED ACCESS RATES, (CONT'D)

5.4 Rates and Charges, (cont'd)

5.4.3 End Office Switching (cont'd.)

A. Local Switching (cont'd.)

2. Service Provided via Company Facilities

(T)

- Per Minute

| | Tandem Connect | | |
|--|----------------|-----------------------|---------------|
| | Originating | Terminating | End Office |
| | | 3 rd Party | |
| AT&T (former BellSouth) areas | \$0.003714 | \$0.0007880 R | \$0.0000000 R |
| AT&T (former SBC) areas | \$0.003599 | \$0.0001360 R | \$0.0000000 R |
| AT&T (former PacBell) areas | | | |
| Zone 1 | \$0.007669 | \$0.0003530 R | \$0.0000000 R |
| Zone 2 | \$0.007844 | \$0.0005280 R | \$0.0000000 R |
| Zone 3 | \$0.008182 | \$0.0008660 R | \$0.0000000 R |
| AT&T (former Ameritech) areas | | | |
| Zone 1 | \$0.003761 | \$0.0002740 R | \$0.0000000 R |
| Zone 2 | \$0.003775 | \$0.0002880 R | \$0.0000000 R |
| Zone 3 | \$0.003778 | \$0.0002910 R | \$0.0000000 R |
| Zone 4 | \$0.003780 | \$0.0002930 R | \$0.0000000 R |
| Zone 5 | \$0.003782 | \$0.0002950 R | \$0.0000000 R |
| CenturyLink (former Qwest) areas | \$0.003357 | \$0.0006360 R | \$0.0000000 R |
| Verizon areas ¹ (CT, MA, NY, RI) | \$0.004118 | \$0.0000240 R | \$0.0000000 R |
| Verizon areas ¹ (DC, DE, MD, NJ, PA, VA) | \$0.004118 | \$0.0000240 R | \$0.0000000 R |
| Fairpoint areas | \$0.003895 | \$0.0000360 R | \$0.0000000 R |
| Frontier WV (former Verizon) areas | \$0.003878 | \$0.0000240 R | \$0.0000240 R |
| Frontier (former SNET) areas | \$0.004714 | \$0.0001810 R | \$0.0000820 R |
| CenturyLink (NV) areas | | | |
| Zone 1 | \$0.005089 | \$0.0005960 R | \$0.0000000 R |
| Zone 2 | \$0.005126 | \$0.0006330 R | \$0.0000000 R |
| Zone 3 | \$0.005193 | \$0.0007000 R | \$0.0000000 R |
| Hawaiian Tel areas | | | |
| Zone 1 | \$0.0032489 | \$0.0006556 R | \$0.0000000 R |
| Zone 2 | \$0.0032489 | \$0.0005256 R | \$0.0000000 R |
| Zone 3 | \$0.0032489 | \$0.0003956 R | \$0.0000000 R |

(C)

(C)

B. Information Surcharge, per Minute

Note 1

Note 1: All access minutes are billed at a single per minute access rate found in Section 5.4.3A, Local Switching. This composite rate includes the elements traditionally billed as Transport Interconnection Charge and Information Surcharge.

¹Equivalent to Verizon's "Composite Terminating End Office Charge"

Some material now found on this sheet was previously found on 4th Revised Sheet 56

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SECTION 5 - SWITCHED ACCESS RATES, (CONT'D)

5.4 Rates and Charges, (cont'd)

5.4.4 Toll-Free 8XX Data Base Query

| | |
|-----------|----------|
| Per Query | \$.0075 |
|-----------|----------|

5.4.5 Switched Access Optional Features

All Optional Features are offered on an Individual Case Basis (ICB).

SECTION 6 - MISCELLANEOUS CHARGES

6.1 Access Recovery Fee

The purpose of the Access Recovery Fee is to partially offset the Company's costs to provide services, support its infrastructure, and recover costs associated with the federally mandated reduction in carrier access rates resulting from the FCC's 2011 Universal Service Fund/Intercarrier Compensation Reform Order.

| <u>Charge</u> | <u>MRC</u> | |
|---------------------|---|-----|
| Access Recovery Fee | \$1.24 on each Business or Residential line | (I) |

6.2 [Reserved for Future Use]

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SECTION 6 - MISCELLANEOUS CHARGES, (CONT'D)

6.3 Presubscribed Interexchange Carrier Charge

The Presubscribed Interexchange Carrier Charge (PICC) is a monthly, flat-rated charge assessed to the interexchange carrier for each presubscribed local exchange service line or trunk. The PICC will be based on a monthly snapshot of end user accounts. No fractional debits or credits will be created. Additionally PICCs will be assessed to end user customers on "no-PIC" lines.

Centrex lines will be billed 1/9th of the multiline business rate. For Centrex groups with fewer than 9 lines, the charge will be the multiline business rate divided by the number of lines in the Centrex group.

ISDN BRI lines will be charged the non-primary residential line rate, and ISDN PRI lines will be charged 5 times the multiline business rate.

| <u>Primary Residential or Single Line Business</u> per line or trunk | <u>Non-Primary Residential</u> per line or trunk | <u>Multiline Business</u> per line or trunk |
|--|--|---|
| \$0.00 | \$0.00 | \$2.50 |

SECTION 6 - MISCELLANEOUS CHARGES, (CONT'D)

6.4 PIC Change Charge

This is a "per request" charge billed for end-users making a change to their preferred long distance service provider. The charge is waived if the end-user is choosing Birch as their preferred provider.

Nonrecurring Charge per Change: \$ 15.00

6.5 [Reserved for Future Use]

SECTION 6 - MISCELLANEOUS CHARGES, (CONT'D)

6.6 Billing Name and Address

6.6.1 Service Description

Billing Name and Address (BNA) service provides account detail of the Company's customers to interexchange carriers, operator service providers, enhanced service providers, and any other provider of interstate telecommunications services.

6.6.2 General

- A. Upon acceptance of an order for BNA service, the Company will furnish account detail for each working number submitted. Account detail consists of current data base information including the end user's billing name and billing address.
- B. Only current information which resides in the Company's data base will be provided. Customers ordering BNA service must accept BNA account detail on an "as is" basis.
- C. The Company will specify the location where requests for BNA service are to be received, and the format in which the requests are to be provided.
- D. The subscribing customer must agree that BNA information will not be resold or otherwise provided to any other person, corporation, partnership or entity, other than Customer's authorized billing agent, and that Billing Name and Address shall be used by Customer or Customer's authorized billing agent solely for:
 - 1. Billing its customers for using Customer's telecommunications services.
 - 2. Any purpose associated with the equal access requirement of United States v. AT&T, 552 F. Supp. 131 (D.D.C. 1982).
 - 3. Verification of service orders of new customers, identification of customers who have moved to a new address, fraud prevention, and similar nonmarketing purposes.

SECTION 6 - MISCELLANEOUS CHARGES, (CONT'D)

6.6 Billing Name and Address (Cont'd)

6.6.2 General (Cont'd)

For calling card calls and collect and third party billed calls, Billing Name and Address for ANI service is not available on accounts of nonpublished/unlisted end users who, by request to the Company (which request may be submitted at any time), have specified that such information not be released.

E. Manual Request

1. At the customer's option, the Company will provide BNA via manual request procedures.
2. BNA service information will be provided by the Company in standard paper format via facsimile or first class U.S. mail.
3. Wherever possible, the Company will provide Billing Name and Address for ANI data no later than ten (10) business days from the date of receipt of the customer's request. Availability of data may be delayed if errors exist in the request received from the customer.
4. In situations where the customer requests more than forty (40) BNA records on a single order, the Company will provide the requested BNA information in a time frame mutually agreed to by the customer and the Company.

F. Mechanized Request

1. At the customer's option, the Company will provide BNA, subject to procedures established for Customer Account Record Exchange (CARE).
2. The customer will submit its requests through proper CARE procedures, as revised or amended.

SECTION 6 - MISCELLANEOUS CHARGES, (CONT'D)

6.6 Billing Name and Address (Cont'd)

6.6.3 Rate Regulations

The number of BNA records for which charges apply will be accumulated by the Company, and billed to the customer on a monthly basis at the rates set forth in 6.6.4 following.

6.6.4 Rates and Charges

| | BNA Request <u>Manual</u> | BNA Request <u>Mechanized</u> |
|----------------------------------|---------------------------------|-------------------------------------|
| Billing Name and Address for ANI | | |
| - Per ANI Requested | \$1.00 | ICB |

SECTION 6 - MISCELLANEOUS CHARGES, (CONT'D)

6.7 Local Number Portability (LNP)

Local Number Portability (LNP) allows, where facilities permit: (1) a local exchange telephone service customer to maintain the same Directory Number (DN) when changing from one telecommunications service provider to another while remaining at the same location; and (2) callers to complete calls to numbers that have been ported. This capability has been activated on a switch specific basis as specified in the Local Exchange Routing Guide (LERG) and/or the National Exchange Carrier Association Inc., F.C.C. No. 4. Tariff.

6.7.1 Local Number Portability Query Description

- A. LNP Query (LNPQ) is an advanced intelligent network capability which utilizes the common channel signaling network to query a database to secure network routing instructions before completion of a call. This database contains the Location Routing Number (LRN) that identifies the switch of the Local Service Provider that serves a customer with a ported DN. The LRN is used to direct the call to the correct network switching element for completion to the end user customer. Where more than one network is involved in completing the call, the network prior to the termination (i.e., the N-1 Network) is normally responsible for querying a LNP database to secure the LRN which is then used in routing the call. In some network arrangements, a third-party's tandem may be interposed between the N-1 carrier and the terminating network.
- B. Where the carrier does not perform a database query, and delivers a call directly to a switch in the Company's network for a NXX designated as a number portable code in the Local Exchange Routing Guide and National Exchange Carrier Association Inc. F.C.C. No. 4, the Company may perform a query for the carrier delivering the call to the Company and bill that carrier a LNP Query charge as described herein.
- C. When the Company is the first point of switching for terminating traffic to another local exchange carrier (e.g., a Company tandem switch), the Company will perform the query on behalf of the carrier delivering the call to the Company and bill that carrier a LNP Query charge as shown herein.

SECTION 6 - MISCELLANEOUS CHARGES, (CONT'D)

6.7 Local Number Portability (LNP) (Cont'd)

6.7.2 Local Number Portability Query Arrangements

- A. There are two arrangements of LNPQ available through the Company's network:
- LNP Query-Tandem
 - LNP Query-End Office
- B. Following is a detailed description of the available service application.
1. When the Company performs a query on behalf of a carrier delivering the call to the Company, the Company's end office or tandem switch will suspend call processing, formulate and launch a query via the common channel signaling network to a LNP database to obtain information necessary to route calls to numbers in portable NXX codes. When the necessary routing information has been returned from the LNP database to the switch originating the query, call processing is resumed and the call is routed to the correct network switching element for completion to the called party.
 2. When a Company tandem switch performs the query on behalf of a carrier, a LNP Query-Tandem charge is applied whenever the call is to a NXX designated as a number portable code in the Local Exchange Routing Guide and/or National Exchange Carrier Association Inc. F.C.C. No. 4. Tariff.
 3. When a Company end office switch performs the query on behalf of a carrier, a LNP Query-End Office charge will apply when the called Directory Number has ported out of the Company switch.

SECTION 6 - MISCELLANEOUS CHARGES, (CONT'D)

6.7 Local Number Portability (LNP) (Cont'd)

6.7.3 Limitations

LNP is used on a call-by-call basis only for routing calls to number portable NXX codes, and cannot be used for purposes other than those described herein unless expressly authorized in writing by the Company.

6.7.4 Local Number Portability Network Management

The Company will administer its network to ensure the provision of acceptable service levels to all telecommunications users of the Company's network services. The Company maintains the right to apply automated or manual protective controls which would generally be applied as a result of occurrences such as failure or overload of Company facilities, customer facilities, or other networks, natural disasters, mass calling, or national security demands.

6.7.5 LNPQ Rate Regulations

The rates and charges associated with LNPQ will be billed monthly, based on recorded usage. For billing purposes, each month is considered to have thirty (30) days.

A. LNPQ Rate Elements

The LNP Query rate element provides for the identification of the Location Routing Number information associated with the directory number including transport of the query to and from the database. This charge is assessed, regardless of the outcome of the query, at either a Tandem or End Office rate depending on where the query was launched.

1. LNP Query-Tandem query charges are assessed for each non-queried call delivered by a carrier to the Company Tandem to for any NXX designated as a number portable code in the Local Exchange Routing Guide and/or National Exchange Carrier Association F.C.C. No. 4. Tariff. This charge is also assessed when a carrier delivers calls to other LECs through a Company Tandem.

SECTION 6 - MISCELLANEOUS CHARGES, (CONT'D)

6.7 Local Number Portability (LNP) (Cont'd)

6.7.5 LNPQ Rate Regulations (Cont'd)

A. LNPQ Rate Elements (Cont'd)

2. LNP Query-End Office query charges are assessed to each non-queried call delivered to the Company by a carrier destined to a Directory Number that has been ported out of a Company end office switch, and the end office switch performs the query.

B. LNPQ Rates

| | |
|----------------------------------|---------|
| LNP Query-Tandem (per query) | \$0.012 |
| LNP Query-End Office (per query) | \$0.012 |

SECTION 6 - MISCELLANEOUS CHARGES, (CONT'D)

6.7 Local Number Portability (LNP) (Cont'd)

6.7.6 LNP End User Surcharge

- A. The Company will assess a monthly number-portability charge to end users served by LNP-capable switches. The charge applies to Company's end users served by LNP-capable switches effective with this tariff section, and for a period no longer than five years. The Company will assess the charge in each end office at such time as the end office becomes LNP capable.
- B. The monthly charge is assessed, as determined by the Company, to all end users or resellers of local exchange service. The LNP End User Surcharge is assessed on a per line basis except as set forth following:
 - 1. When a customer is provided Integrated Services Digital Network-Primary Rate Interface (ISDN-PRI) that permits the provision of up to 24 voice-grade equivalent channels over a single T-1 facility, the LNP End User Surcharge for ISDN-PRI is assessed per T-1 facility;
 - 2. When a customer is provided PBX Service, the LNP End User Surcharge is assessed per PBX trunk;
 - 3. The LNP End User Surcharge is not assessed to Lifeline customers.
- C. LNP End User Surcharge Rates

The rates and charges associated with LNP End User Surcharge will be billed monthly.

| Basic, per line <u>per month</u> | ISDN-PRI, per T-1 <u>per month</u> | PBX, per trunk <u>per month</u> |
|-------------------------------------|---------------------------------------|------------------------------------|
| \$0.00 | \$0.00 | \$0.00 |

SECTION 6 - MISCELLANEOUS CHARGES, (CONT'D)

6.8 Regulatory Compliance Fee (applicable only in TN)

The Regulatory Compliance Fee covers costs associated with ongoing regulatory and compliance obligations, participation in regulatory proceedings, handling customer complaints with regulatory agencies, and negotiations with other regulated carriers.

Regulatory Compliance Fee \$0.75

6.9 Universal Service Fund

6.9.1 Interstate and International Revenue Factor

For the purpose of allocating a portion of bundled local exchange service revenue to the interstate jurisdiction, the company derives, on a quarterly basis, an Interstate and International Revenue Factor (IIF). This factor is the percentage interstate and international revenue comprises of total regulated revenue. Interstate and International revenue includes usage-based interstate/international long distance charges, and allowance-based usage priced out at standard usage rates. The IIF is reviewed quarterly and is available at www.accesscomm.com/about/billaddress.aspx.

6.9.2 Universal Service Fund Pass-Through

In connection with the FCC's Universal Service Orders, Birch will pay a percentage of its retail revenues to support the Universal Service Fund (USF). Birch will pass-through the USF assessment to its customers by assessing a charge applicable against all retail interstate and international revenue, including usage and non-usage revenue. Retail interstate and international revenue will be derived, in part, by the company's IIF identified in section 6.9.1.

This surcharge is in addition to standard usage charges and any applicable service charges and surcharges associated with the Company's service. The Company's Universal Service Fee factor will match the relevant quarterly Universal Service Contribution Factor approved by the FCC rounded up to the nearest tenth of a percent. Universal Service Contribution Factors are available at <http://www.fcc.gov/encyclopedia/contribution-factor-quarterly-filings-universal-service-fund-usf-management-support>.

(T)
(T)

SECTION 6 - MISCELLANEOUS CHARGES, (CONT'D)

6.9 Universal Service Fund (Cont'd)

6.9.2 Universal Service Fund Pass-Through (Cont'd)

Using these special numbers, the USF charge on each customer's bill will be calculated as follows (except customers in Colorado, Iowa, Minnesota, Montana, Nebraska, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee or Wyoming):

(C)
(C)

$$\text{USF(A)} = \text{Quarterly Universal Service Fee Factor} \times \text{Sum of } [(\text{Line or Package Price} + \text{Recurring Feature Charges} + \text{Facilities Charge/s} + \text{Regulatory Compliance Fee} + \text{Carrier Access Recovery Charge}) \times \text{IIF}] + \text{Interstate LD Charges} + \text{International LD Charges}]$$

$$\text{USF(B)} = \text{Quarterly Universal Service Fee Factor} \times \text{USF(A)}$$

$$\text{USF} = \text{total USF charge} = \text{USF(A)} + \text{USF(B)}$$

For customers in Colorado, Iowa, Minnesota, Montana, Nebraska, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee or Wyoming, the USF charge on each customer's bill will be calculated as follows:

(C)
(C)

$$\text{USF(A)} = \text{Quarterly Universal Service Fee Factor} \times \text{Sum of } [\text{Facilities Charge/s} + \text{Regulatory Compliance Fee} + \text{Carrier Access Recovery Charge} + \text{Interstate LD Charges} + \text{International LD Charges} + \{\text{PF\%} \times \text{Package Price}\}]$$

$$\text{USF(B)} = \text{Quarterly Universal Service Fee Factor} \times \text{USF(A)}$$

$$\text{USF} = \text{total USF charge} = \text{USF(A)} + \text{USF(B)}$$

Where Package Factor (PF) = the percentage of the Package Price that comprises unbilled interstate minutes as measured across all Package lines. The PF is reviewed quarterly and is available at www.accesscomm.com/about/billaddress.aspx.

SECTION 6 - MISCELLANEOUS CHARGES, (CONT'D)

- 6.10 Facilities Charge (applicable only in Colorado, Iowa, Minnesota, Montana, Nebraska, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee or Wyoming) (C)
(C)

The Facilities Charge provides for delivery of high quality services, including connecting customers to the network, customer service and network monitoring, updating operational systems, and the construction of a facilities-based network. The Facilities Charge is applied to each line. A Supplementary Facilities Charge is also applied to each business line where there's more than one business line at the physical location. Long Distance-only numbers are subject to a Facilities Charge where there is more than one business line at the physical location.

The Supplementary Facilities Charge will be discounted on each business line by \$1.99 per month (Discount 1) where your relationship with Access meets both of the following requirements:

- has a contract with Access Integrated Networks, and
- uses Access Integrated Networks Interstate Long Distance

Where another Interstate Long Distance carrier other than Access Integrated Networks has been selected, a \$3.99 discount per month applies to the Supplementary Facilities Charge (Discount 2).

| <u>Charge</u> | <u>MRC</u> |
|---------------------------------|--|
| Facilities Charge | \$6.42 on each Business line \$7.11 on each Residential line \$3.99 on each applicable Long Distance-only number |
| Supplementary Facilities Charge | \$6.63 on each applicable Business Line \$3.99 on each applicable Long Distance-only number |
| - Discount 1 | (\$1.99) |
| - Discount 2 | (\$3.99) |

- 6.11 Carrier Access Recovery Charge (applicable only in Colorado, Iowa, Minnesota, Montana, Nebraska, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee or Wyoming) (C)
(C)

The Carrier Access Recovery Charge funds a contribution towards higher costs of interconnection with other carriers, due to the ongoing shift of network cost recovery from carrier-billed access services.

| | |
|--------------------------------|--------|
| Carrier Access Recovery Charge | \$0.50 |
|--------------------------------|--------|

SECTION 7 - DEDICATED ACCESS SERVICE

The Company provides interstate Dedicated Access Service for use as a stand-alone service, or in connection with other Company services. Dedicated Access Services are offered on a point-to-point basis. Each Dedicated Access Service is dedicated to the Customer and the entire usable bandwidth for each service is available to the Customer for their exclusive use.

Pricing for all Dedicated Access Services is on an Individual Case Basis (ICB).

SECTION 8 - SPECIAL ARRANGEMENTS

8.1 Individual Case Basis (ICB) Arrangements

Arrangements will be developed on an Individual Case Basis (ICB) in response to a bona fide special request from a Customer or prospective Customer to develop a competitive bid for a service, or to establish rates for services for which the Company has not yet established generically tariffed rates. ICB rates will be offered to the Customer in writing and on a non-discriminatory basis.

8.2 Contracts

The Company may provide any of the services offered under this tariff, or combinations of services, to Customers on a contractual basis. The terms and conditions of each contract offering are subject to the agreement of both the Customer and Company. Such contract offerings will be made available to similarly situated Customers in substantially similar circumstances. Rates in other sections of this tariff do not apply to Customers who agree to contract arrangements, with respect to services within the scope of the contract.

Services provided under contract are not eligible for any promotional offerings which may be offered by the Company from time to time.

SECTION 8 - SPECIAL ARRANGEMENTS

[RESERVED FOR FUTURE USE]

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(D)

Transmittal No. 7

Issued: May 10, 2013

by: Christopher J. Bunce, Vice President Legal and General Counsel
2300 Main St. Suite 600
Kansas City, MO 64108

Effective: May 11, 2013

SECTION 9 – GRANDFATHERED SERVICES

As of August 21, 2007, services in sections 9.1-9.5 are only available to former IDT America, Corp. customers.

9.1 Presubscribed Interexchange Carrier Charge

The Presubscribed Interexchange Carrier Charge (PICC) is a monthly, flat-rated charge assessed to the interexchange carrier for each presubscribed local exchange service line or trunk. The PICC will be based on a monthly snapshot of end user accounts. ISDN PRI arrangements will be billed five (5) times the multiline business rate. No fractional debits or credits will be created.

| | |
|--|--------|
| Residential or Single line Business | \$0.00 |
| Multiline Business (Except Centrex) | \$0.00 |
| Centrex per line or trunk per line or trunk per station* | \$0.00 |

9.2 End User Common Line Charge

The Company recovers some of the costs of the telephone line or trunk connected to the customer premises through a monthly charge called the End User Access Charge. The End User Access Charge is a monthly, flat-rated charge assessed to end users for each local exchange service line or trunk. The End User Access Charge will be based on a monthly snapshot of end user accounts. No fractional debits or credits will be created.

| | |
|---|--------|
| Primary Residential or Single Line Business | \$6.50 |
| Non-Primary Residential | \$6.50 |

SECTION 9 – GRANDFATHERED SERVICES

9.3 Local Number Portability (LNP)

Local Number Portability (LNP) allows, where facilities permit: (1) a local exchange telephone service customer to maintain the same Directory Number (DN) when changing from one telecommunications service provider to another while remaining at the same location; and (2) callers to complete calls to numbers that have been ported. This capability has been activated on a switch specific basis as specified in the Local Exchange Routing Guide (LERG) and/or the National Exchange Carrier Association Inc., F.C.C. No. 4. Tariff, 5.3.1 LNP End User Surcharge

- A. The Company will assess a monthly number-portability charge to end users served by LNP-capable switches. The charge applies to Company's end users served by LNP-capable switches effective with this tariff section, and for a period no longer than five years. The Company will assess the charge in each end office at such time as the end office becomes LNP capable.
- B. The monthly charge is assessed, as determined by the Company, to all end users or resellers of local exchange service. The LNP End User Surcharge is assessed on a per line basis except as set forth following:
 - 1. When a customer is provided Integrated Services Digital Network-Primary Rate Interface (ISDN-PRI) that permits the provision of up to 24 voice grade equivalent channels over a single T-1 facility, the LNP End User Surcharge for ISDN-PRI is assessed per T-1 facility;
 - 2. When a customer is provided PBX Service, the LNP End User Surcharge is assessed per PBX trunk;
 - 3. The LNP End User Surcharge is not assessed to Lifeline customers.

9.4 LNP End User Surcharge Rates

The rates and charges associated with LNP End User Surcharge will be billed monthly.

Per line, per month: \$0.35

SECTION 9 – GRANDFATHERED SERVICES

9.5 Federal Universal Service Fee

In connection with the FCC's Universal Service Orders, ACCESS will pay a percentage of its retail revenues to support the Universal Service Fund (USF). ACCESS will pass-through the USF assessment to its customers by assessing a charge applicable against all retail interstate and international charges, including usage and non-usage charges. This surcharge is in addition to standard usage charges and any applicable service charges and surcharges associated with the Company's service. The Company's Universal Service Fee factor will match the relevant quarterly Universal Service Contribution Factor approved by the FCC rounded up to the nearest tenth of a percent. Universal Service Contribution Factors are available at <http://www.fcc.gov/encyclopedia/contribution-factor-quarterly-filings-universal-service-fund-usf-management-support>.

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(T)

SECTION 10 – VOIP-PSTN TRAFFIC

10.1 General

VoIP-PSTN Traffic is traffic exchanged in time division multiplexing ("TDM") format that originates and/or terminates in Internet protocol ("IP") format. VoIP-PSTN Traffic, identified by supplied VoIP PVU Factors, will be billed as follows:

- Toll VoIP-PSTN traffic shall be billed at the Company's applicable interstate switched access rates specified in this Tariff FCC No. No. 1.
- Non-Toll VoIP-PSTN traffic shall be billed at the FCC Mandated Cap for Reciprocal Compensation and shall be not be greater than \$0.0007 per MOU.

(N)

(N)

Exhibit J

*This tariff, Birch Communications Tariff FCC No. 1, replaces in its entirety,
Access Integrated Networks d/b/a Birch Communications Tariff FCC No. 3*

TITLE PAGE
ACCESS SERVICES TARIFF
OF
BIRCH COMMUNICATIONS

This tariff contains the descriptions, regulations, and rates applicable to the furnishing of service and facilities for telecommunications services provided by Birch Communications. This tariff is on file with the Federal Communications Commission (FCC). Copies may be inspected during normal business hours at the Company's principal place of business at 2300 Main St. Suite 600, Kansas City, MO 64108.

Wherever in this Tariff or its headings, the term "Company" or the name "Birch" appears, that shall mean and shall refer to Birch Communications.

SECTION 5 - SWITCHED ACCESS RATES

5.1 General

This section contains the specific regulations governing the rates and charges that apply for Switched Access Services:

There are three types of rates and charges that apply to Switched Access Service:

- Non-Recurring Charges: One-time charges that apply for a specific work activity.
- Recurring Charges: Fixed charges apply each month and depend on the number and type of facilities in place.
- Usage Charges: Charges that are applied on a per access minute basis. Usage rates are accumulated over a monthly period.

SECTION 5 - SWITCHED ACCESS RATES, (CONT'D)

5.2 Rate Categories

There are three rate categories which apply to Switched Access Service:

- End Office Switching (includes Common Line and Switched Transport)
- Toll-Free 8XX Data Base Access Service
- Optional Features

5.2.1 End Office Switching

The Company combines traditional per minute switched access rate elements into a single composite per minute rate element. The composite rate element includes the following access components:

A. Common Line

The Common Line component is related to the use of Company-provided end user common lines, and the terminations in the end office of end user lines, by customers and end users for intrastate access. (T)

B. Switched Transport

The Switched Transport component is related to the transmission and tandem switching facilities between the customer designated premises and the end office switch(es) where the customer's traffic is switched to originate or terminate the customer's communications. The Switched Transport component also includes transport between an end office which serves as host for a remote switching system or module (RSS or RSM) and the RSS or RSM or its equivalent.

C. End Office Switching

The End Office Switching component is related to the use of end office switching equipment, the terminations of calls at Company Intercept Operators or recordings, the Signaling Transfer Point (STP) costs, and the SS7 signaling function between the end office and the STP. (T)

SECTION 5 - SWITCHED ACCESS RATES, (CONT'D)

5.2 Rate Categories, (cont'd)

5.2.4 Toll-Free 8XX Data Base Query

The Toll-Free 8XX Data Base Query Charge, will apply for each Toll-Free 8XX call query received at the Company's (or its provider's) Toll-Free 8XX data base.

5.2.5 Switched Access Optional Features

Following are the various optional features that are available, where the technical capability exists:

- (a) Supervisory Signaling
- (b) Alternate Traffic Routing
- (c) Cut-Through
- (d) Service Class Routing
- (e) FGD with 950 Access
- (f) Signaling System Seven (SS7)
- (g) Basic Initial Address Message Delivery
- (h) Called Directory Number Delivery
- (i) Flexible Automatic Number Identification Delivery

Other optional features may be available on an Individual Case Basis (ICB).

SECTION 5 - SWITCHED ACCESS RATES, (CONT'D)

5.3 Billing of Access Minutes

When recording originating calls over FG Access with multi-frequency address signaling, usage measurement begins when the first wink supervisory signal is forwarded from the Customer's facilities. The measurement of originating call usage over FG Access ends when the originating FG Access entry switch receives disconnect supervision from either the originating End User's Local Switching Center - (indicating that the originating End User has disconnected), or the Customer's facilities, whichever is recognized first by the entry switch.

For terminating calls over FG Access with multi-frequency address signaling, the measurement of access minutes begins when a seizure signal is received from the Carrier's trunk group at the Point of Presence within the LATA. The measurement of terminating call usage over FG Access ends when a disconnect signal is received, indicating that either the originating or terminating user has disconnected.

When recording originating calls over FG Access with SS7 signaling, usage measurement begins with the transmission of the initial address message by the switch for direct trunk groups and with the receipt of an exit message by the switch for tandem trunk groups. The measurement of originating FG Access usage ends when the entry switch receives or sends a release message, whichever occurs first.

For terminating calls over FG Access with SS7 signaling, the measurement of access minutes begins when the terminating recording switch receives the initial address message from the terminating End User. On directly routed trunk groups or on tandem routed trunk groups, the Company switch receives the initial address message and sends the indication to the Customer in the form of an answer message. The measurement of terminating FG Access call usage ends when the entry switch receives or sends a release message, whichever occurs first.

SECTION 5 - SWITCHED ACCESS RATES, (CONT'D)

5.4 Rates and Charges

5.4.1 Common Line Access Service

A. Carrier Common Line Charge

- Per Originating Minute
- Per Terminating Minute

Note 1
Note 1

Note 1: All access minutes are billed at a single per minute access rate found in Section 5.4.3.A, Local Switching. This composite rate includes the elements traditionally billed as Carrier Common Line.

SECTION 5 - SWITCHED ACCESS RATES, (CONT'D)

5.4 Rates and Charges, (cont'd)

5.4.2 Switched Transport

| | | | |
|----|---------------------------------------|---------------------|--------------------------|
| A. | Entrance Facility | | |
| | | <u>Nonrecurring</u> | <u>Monthly Recurring</u> |
| | First DS1 | ICB | ICB |
| | Additional DS1s | ICB | ICB |
| B. | Direct-Trunked Transport | | |
| | | <u>Nonrecurring</u> | <u>Monthly Recurring</u> |
| 1. | Direct Transport | | |
| | Per DS1 | ICB | ICB |
| | Per DS1, per Mile | ICB | ICB |
| 2. | Dedicated Trunk Port | | |
| | Per DS1 Port | ICB | ICB |
| C. | Common Transport | | |
| | | | <u>Nonrecurring</u> |
| 1. | Installation | | |
| | First Trunk | | ICB |
| | Additional Trunks | | ICB |
| 2. | Tandem Switched, per Minute | | Note 1 |
| 3. | Tandem Switched, per Minute, per Mile | | Note 1 |
| 4. | Tandem Switching, per Minute | | Note 1 |
| 5. | Common Multiplexing, per Minute | | Note 1 |
| 6. | Common Trunk Port, per Minute | | Note 1 |

Note 1: All access minutes are billed at a single per minute access rate found in Section 5.4.3A, Local Switching. This composite rate includes the elements traditionally billed as Common Transport.

SECTION 5 - SWITCHED ACCESS RATES, (CONT'D)

5.4 Rates and Charges, (cont'd)

5.4.2 Switched Transport, (cont'd)

D. Transport Interconnection Charge

1. Originating, per Minute

Note 1

Note 1: All access minutes are billed at a single per minute access rate found in Section 5.4.3A, Local Switching. This composite rate includes the elements traditionally billed as Transport Interconnection Charge and Information Surcharge.

SECTION 5 - SWITCHED ACCESS RATES, (CONT'D)

5.4 Rates and Charges, (cont'd)

5.4.3 End Office Switching

A. Local Switching

- Per Minute

| | Service Provided via Commercial Agreement | | | | Service Provided via Company Facilities | |
|--|---|---------------|----------------|---------------|---|---------------|
| | Tandem Connect | | Direct Connect | | Tandem Connect | |
| | Originating | Terminating | Originating | Terminating | Originating | Terminating |
| AT&T (former BellSouth) areas | \$0.005694 | \$0.005058(R) | \$0.002961 | \$0.003125(I) | \$0.003714 | \$0.003637(R) |
| AT&T (former SBC) areas | \$0.004006 | \$0.004441(I) | \$0.002682 | \$0.004017(I) | \$0.003599 | \$0.004034(I) |
| AT&T (former PacBell) areas | | | | | | |
| Zone 1 | \$0.008578 | \$0.005298(R) | \$0.003089 | \$0.004505(I) | \$0.007669 | \$0.004389(R) |
| Zone 2 | \$0.009430 | \$0.006150(R) | \$0.003164 | \$0.004580(I) | \$0.007844 | \$0.004564(R) |
| Zone 3 | \$0.010481 | \$0.007201(R) | \$0.003169 | \$0.004585(I) | \$0.008182 | \$0.004902(R) |
| AT&T (former Ameritech) areas | | | | | | |
| Zone 1 | \$0.005207 | \$0.004544(R) | \$0.003478 | \$0.003186(R) | \$0.003761 | \$0.003228(R) |
| Zone 2 | \$0.005253 | \$0.004590(R) | \$0.003478 | \$0.003186(R) | \$0.003775 | \$0.003242(R) |
| Zone 3 | \$0.005260 | \$0.004597(R) | \$0.003478 | \$0.003186(R) | \$0.003778 | \$0.003245(R) |
| Zone 4 | \$0.005394 | \$0.004731(R) | \$0.003478 | \$0.003186(R) | \$0.003780 | \$0.003247(R) |
| Zone 5 | \$0.005944 | \$0.005281(R) | \$0.003478 | \$0.003186(R) | \$0.003782 | \$0.003249(R) |
| Qwest | \$0.006080 | \$0.005199(R) | \$0.002445 | \$0.001785(R) | \$0.003357 | \$0.002553(R) |
| Verizon areas ¹ (CT, MA, NY, RI) | \$0.005692 | \$0.004710(R) | \$0.002406 | \$0.003112(I) | \$0.004118 | \$0.003136(R) |
| Verizon areas ¹ (DC, DE, MD, NJ, PA, VA) | \$0.005692 | \$0.004760(R) | \$0.002406 | \$0.003162(I) | \$0.004118 | \$0.003186(R) |
| Fairpoint areas | \$0.005495 | \$0.004406(R) | \$0.002264 | \$0.001625(R) | \$0.003895 | \$0.002806(R) |
| SNET areas | \$0.005872 | \$0.004378(R) | \$0.003657 | \$0.003563(R) | \$0.004714 | \$0.003220(R) |
| CenturyLink (NV) areas | | | | | | |
| Zone 1 | \$0.007604 | \$0.006122(R) | \$0.004593 | \$0.003111(R) | \$0.005089 | \$0.003607(R) |
| Zone 2 | \$0.007708 | \$0.006226(R) | \$0.004606 | \$0.003124(R) | \$0.005126 | \$0.003644(R) |
| Zone 3 | \$0.007952 | \$0.006470(R) | \$0.004629 | \$0.003147(R) | \$0.005193 | \$0.003711(R) |

B. Information Surcharge, per Minute

Note 1

Note 1: All access minutes are billed at a single per minute access rate found in Section 5.4.3A, Local Switching. This composite rate includes the elements traditionally billed as Transport Interconnection Charge and Information Surcharge.

¹Equivalent to Verizon's "Composite Terminating End Office Charge"

SECTION 5 - SWITCHED ACCESS RATES, (CONT'D)

5.4 Rates and Charges, (cont'd)

5.4.4 Toll-Free 8XX Data Base Query

| | |
|-----------|----------|
| Per Query | \$.0075 |
|-----------|----------|

5.4.5 Switched Access Optional Features

All Optional Features are offered on an Individual Case Basis (ICB).

SECTION 6 - MISCELLANEOUS CHARGES

6.1 Access Recovery Fee

The purpose of the Access Recovery Fee is to partially offset the Company's costs to provide services, support its infrastructure, and recover costs associated with the federally mandated reduction in carrier access rates resulting from the FCC's 2011 Universal Service Fund/Intercarrier Compensation Reform Order.

Charge

Access Recovery Fee

MRC

\$0.50 on each Business or Residential line

(I)

6.2 [Reserved for Future Use]

SECTION 6 - MISCELLANEOUS CHARGES, (CONT'D)

6.3 Presubscribed Interexchange Carrier Charge

The Presubscribed Interexchange Carrier Charge (PICC) is a monthly, flat-rated charge assessed to the interexchange carrier for each presubscribed local exchange service line or trunk. The PICC will be based on a monthly snapshot of end user accounts. No fractional debits or credits will be created. Additionally PICCs will be assessed to end user customers on "no-PIC" lines.

Centrex lines will be billed 1/9th of the multiline business rate. For Centrex groups with fewer than 9 lines, the charge will be the multiline business rate divided by the number of lines in the Centrex group.

ISDN BRI lines will be charged the non-primary residential line rate, and ISDN PRI lines will be charged 5 times the multiline business rate.

| <u>Primary Residential or Single Line Business</u> per line or trunk | <u>Non-Primary Residential</u> per line or trunk | <u>Multiline Business</u> per line or trunk |
|--|--|---|
| \$0.00 | \$0.00 | \$2.50 |

SECTION 6 - MISCELLANEOUS CHARGES, (CONT'D)

6.4 PIC Change Charge

This is a “per request” charge billed for end-users making a change to their preferred long distance service provider. The charge is waived if the end-user is choosing Birch as their preferred provider.

Nonrecurring Charge per Change: \$ 15.00

6.5 [Reserved for Future Use]

SECTION 6 - MISCELLANEOUS CHARGES, (CONT'D)

6.6 Billing Name and Address

6.6.1 Service Description

Billing Name and Address (BNA) service provides account detail of the Company's customers to interexchange carriers, operator service providers, enhanced service providers, and any other provider of interstate telecommunications services.

6.6.2 General

- A. Upon acceptance of an order for BNA service, the Company will furnish account detail for each working number submitted. Account detail consists of current data base information including the end user's billing name and billing address.
- B. Only current information which resides in the Company's data base will be provided. Customers ordering BNA service must accept BNA account detail on an "as is" basis.
- C. The Company will specify the location where requests for BNA service are to be received, and the format in which the requests are to be provided.
- D. The subscribing customer must agree that BNA information will not be resold or otherwise provided to any other person, corporation, partnership or entity, other than Customer's authorized billing agent, and that Billing Name and Address shall be used by Customer or Customer's authorized billing agent solely for:
 - 1. Billing its customers for using Customer's telecommunications services.
 - 2. Any purpose associated with the equal access requirement of United States v. AT&T, 552 F. Supp. 131 (D.D.C. 1982).
 - 3. Verification of service orders of new customers, identification of customers who have moved to a new address, fraud prevention, and similar nonmarketing purposes.

SECTION 6 - MISCELLANEOUS CHARGES, (CONT'D)

6.6 Billing Name and Address (Cont'd)

6.6.2 General (Cont'd)

For calling card calls and collect and third party billed calls, Billing Name and Address for ANI service is not available on accounts of nonpublished/unlisted end users who, by request to the Company (which request may be submitted at any time), have specified that such information not be released.

E. Manual Request

1. At the customer's option, the Company will provide BNA via manual request procedures.
2. BNA service information will be provided by the Company in standard paper format via facsimile or first class U.S. mail.
3. Wherever possible, the Company will provide Billing Name and Address for ANI data no later than ten (10) business days from the date of receipt of the customer's request. Availability of data may be delayed if errors exist in the request received from the customer.
4. In situations where the customer requests more than forty (40) BNA records on a single order, the Company will provide the requested BNA information in a time frame mutually agreed to by the customer and the Company.

F. Mechanized Request

1. At the customer's option, the Company will provide BNA, subject to procedures established for Customer Account Record Exchange (CARE).
2. The customer will submit its requests through proper CARE procedures, as revised or amended.

SECTION 6 - MISCELLANEOUS CHARGES, (CONT'D)

6.6 Billing Name and Address (Cont'd)

6.6.3 Rate Regulations

The number of BNA records for which charges apply will be accumulated by the Company, and billed to the customer on a monthly basis at the rates set forth in 6.6.4 following.

6.6.4 Rates and Charges

| | BNA Request <u>Manual</u> | BNA Request <u>Mechanized</u> |
|----------------------------------|---------------------------------|-------------------------------------|
| Billing Name and Address for ANI | | |
| - Per ANI Requested | \$1.00 | ICB |

SECTION 6 - MISCELLANEOUS CHARGES, (CONT'D)

6.7 Local Number Portability (LNP)

Local Number Portability (LNP) allows, where facilities permit: (1) a local exchange telephone service customer to maintain the same Directory Number (DN) when changing from one telecommunications service provider to another while remaining at the same location; and (2) callers to complete calls to numbers that have been ported. This capability has been activated on a switch specific basis as specified in the Local Exchange Routing Guide (LERG) and/or the National Exchange Carrier Association Inc., F.C.C. No. 4. Tariff.

6.7.1 Local Number Portability Query Description

- A. LNP Query (LNPQ) is an advanced intelligent network capability which utilizes the common channel signaling network to query a database to secure network routing instructions before completion of a call. This database contains the Location Routing Number (LRN) that identifies the switch of the Local Service Provider that serves a customer with a ported DN. The LRN is used to direct the call to the correct network switching element for completion to the end user customer. Where more than one network is involved in completing the call, the network prior to the termination (i.e., the N-1 Network) is normally responsible for querying a LNP database to secure the LRN which is then used in routing the call. In some network arrangements, a third-party's tandem may be interposed between the N-1 carrier and the terminating network.
- B. Where the carrier does not perform a database query, and delivers a call directly to a switch in the Company's network for a NXX designated as a number portable code in the Local Exchange Routing Guide and National Exchange Carrier Association Inc. F.C.C. No. 4, the Company may perform a query for the carrier delivering the call to the Company and bill that carrier a LNP Query charge as described herein.
- C. When the Company is the first point of switching for terminating traffic to another local exchange carrier (e.g., a Company tandem switch), the Company will perform the query on behalf of the carrier delivering the call to the Company and bill that carrier a LNP Query charge as shown herein.

SECTION 6 - MISCELLANEOUS CHARGES, (CONT'D)

6.7 Local Number Portability (LNP) (Cont'd)

6.7.2 Local Number Portability Query Arrangements

- A. There are two arrangements of LNPQ available through the Company's network:
- LNP Query-Tandem
 - LNP Query-End Office
- B. Following is a detailed description of the available service application.
1. When the Company performs a query on behalf of a carrier delivering the call to the Company, the Company's end office or tandem switch will suspend call processing, formulate and launch a query via the common channel signaling network to a LNP database to obtain information necessary to route calls to numbers in portable NXX codes. When the necessary routing information has been returned from the LNP database to the switch originating the query, call processing is resumed and the call is routed to the correct network switching element for completion to the called party.
 2. When a Company tandem switch performs the query on behalf of a carrier, a LNP Query-Tandem charge is applied whenever the call is to a NXX designated as a number portable code in the Local Exchange Routing Guide and/or National Exchange Carrier Association Inc. F.C.C. No. 4. Tariff.
 3. When a Company end office switch performs the query on behalf of a carrier, a LNP Query-End Office charge will apply when the called Directory Number has ported out of the Company switch.

SECTION 6 - MISCELLANEOUS CHARGES, (CONT'D)

6.7 Local Number Portability (LNP) (Cont'd)

6.7.3 Limitations

LNP is used on a call-by-call basis only for routing calls to number portable NXX codes, and cannot be used for purposes other than those described herein unless expressly authorized in writing by the Company.

6.7.4 Local Number Portability Network Management

The Company will administer its network to ensure the provision of acceptable service levels to all telecommunications users of the Company's network services. The Company maintains the right to apply automated or manual protective controls which would generally be applied as a result of occurrences such as failure or overload of Company facilities, customer facilities, or other networks, natural disasters, mass calling, or national security demands.

6.7.5 LNPQ Rate Regulations

The rates and charges associated with LNPQ will be billed monthly, based on recorded usage. For billing purposes, each month is considered to have thirty (30) days.

A. LNPQ Rate Elements

The LNP Query rate element provides for the identification of the Location Routing Number information associated with the directory number including transport of the query to and from the database. This charge is assessed, regardless of the outcome of the query, at either a Tandem or End Office rate depending on where the query was launched.

1. LNP Query-Tandem query charges are assessed for each non-queried call delivered by a carrier to the Company Tandem to for any NXX designated as a number portable code in the Local Exchange Routing Guide and/or National Exchange Carrier Association F.C.C. No. 4. Tariff. This charge is also assessed when a carrier delivers calls to other LECs through a Company Tandem.

SECTION 6 - MISCELLANEOUS CHARGES, (CONT'D)

6.7 Local Number Portability (LNP) (Cont'd)

6.7.5 LNPQ Rate Regulations (Cont'd)

A. LNPQ Rate Elements (Cont'd)

2. LNP Query-End Office query charges are assessed to each non-queried call delivered to the Company by a carrier destined to a Directory Number that has been ported out of a Company end office switch, and the end office switch performs the query.

B. LNPQ Rates

| | |
|----------------------------------|---------|
| LNP Query-Tandem (per query) | \$0.012 |
| LNP Query-End Office (per query) | \$0.012 |

SECTION 6 - MISCELLANEOUS CHARGES, (CONT'D)

6.7 Local Number Portability (LNP) (Cont'd)

6.7.6 LNP End User Surcharge

- A. The Company will assess a monthly number-portability charge to end users served by LNP-capable switches. The charge applies to Company's end users served by LNP-capable switches effective with this tariff section, and for a period no longer than five years. The Company will assess the charge in each end office at such time as the end office becomes LNP capable.
- B. The monthly charge is assessed, as determined by the Company, to all end users or resellers of local exchange service. The LNP End User Surcharge is assessed on a per line basis except as set forth following:
 - 1. When a customer is provided Integrated Services Digital Network-Primary Rate Interface (ISDN-PRI) that permits the provision of up to 24 voice-grade equivalent channels over a single T-1 facility, the LNP End User Surcharge for ISDN-PRI is assessed per T-1 facility;
 - 2. When a customer is provided PBX Service, the LNP End User Surcharge is assessed per PBX trunk;
 - 3. The LNP End User Surcharge is not assessed to Lifeline customers.
- C. LNP End User Surcharge Rates

The rates and charges associated with LNP End User Surcharge will be billed monthly.

| Basic, per line <u>per month</u> | ISDN-PRI, per T-1 <u>per month</u> | PBX, per trunk <u>per month</u> |
|-------------------------------------|---------------------------------------|------------------------------------|
| \$0.00 | \$0.00 | \$0.00 |

SECTION 6 - MISCELLANEOUS CHARGES, (CONT'D)

6.8 Regulatory Compliance Fee (applicable only in TN)

The Regulatory Compliance Fee covers costs associated with ongoing regulatory and compliance obligations, participation in regulatory proceedings, handling customer complaints with regulatory agencies, and negotiations with other regulated carriers.

Regulatory Compliance Fee \$0.75

6.9 Universal Service Fund

6.9.1 Interstate and International Revenue Factor

For the purpose of allocating a portion of bundled local exchange service revenue to the interstate jurisdiction, the company derives, on a quarterly basis, an Interstate and International Revenue Factor (IIF). This factor is the percentage interstate and international revenue comprises of total regulated revenue. Interstate and International revenue includes usage-based interstate/international long distance charges, and allowance-based usage priced out at standard usage rates. The IIF is reviewed quarterly and is available at www.accesscomm.com/about/billaddress.aspx.

6.9.2 Universal Service Fund Pass-Through

In connection with the FCC's Universal Service Orders, Birch will pay a percentage of its retail revenues to support the Universal Service Fund (USF). Birch will pass-through the USF assessment to its customers by assessing a charge applicable against all retail interstate and international revenue, including usage and non-usage revenue. Retail interstate and international revenue will be derived, in part, by the company's IIF identified in section 6.9.1.

This surcharge is in addition to standard usage charges and any applicable service charges and surcharges associated with the Company's service. The Company's Universal Service Fee factor will match the relevant quarterly Universal Service Contribution Factor approved by the FCC rounded up to the nearest tenth of a percent. Universal Service Contribution Factors are available at <http://www.fcc.gov/encyclopedia/contribution-factor-quarterly-filings-universal-service-fund-usf-management-support>.

(T)
(T)

SECTION 6 - MISCELLANEOUS CHARGES, (CONT'D)

6.9 Universal Service Fund (Cont'd)

6.9.2 Universal Service Fund Pass-Through (Cont'd)

Using these special numbers, the USF charge on each customer's bill will be calculated as follows (except customers in Colorado, Iowa, Minnesota, Montana, Nebraska, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee or Wyoming): (C)
(C)

$$\text{USF(A)} = \text{Quarterly Universal Service Fee Factor} \times \text{Sum of } [(\text{Line or Package Price} + \text{Recurring Feature Charges} + \text{Facilities Charge/s} + \text{Regulatory Compliance Fee} + \text{Carrier Access Recovery Charge}) \times \text{IIF}] + \text{Interstate LD Charges} + \text{International LD Charges}]$$

$$\text{USF(B)} = \text{Quarterly Universal Service Fee Factor} \times \text{USF(A)}$$

$$\text{USF} = \text{total USF charge} = \text{USF(A)} + \text{USF(B)}$$

For customers in Colorado, Iowa, Minnesota, Montana, Nebraska, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee or Wyoming, the USF charge on each customer's bill will be calculated as follows: (C)
(C)

$$\text{USF(A)} = \text{Quarterly Universal Service Fee Factor} \times \text{Sum of } [\text{Facilities Charge/s} + \text{Regulatory Compliance Fee} + \text{Carrier Access Recovery Charge} + \text{Interstate LD Charges} + \text{International LD Charges} + \{\text{PF\%} \times \text{Package Price}\}]$$

$$\text{USF(B)} = \text{Quarterly Universal Service Fee Factor} \times \text{USF(A)}$$

$$\text{USF} = \text{total USF charge} = \text{USF(A)} + \text{USF(B)}$$

Where Package Factor (PF) = the percentage of the Package Price that comprises unbilled interstate minutes as measured across all Package lines. The PF is reviewed quarterly and is available at www.accesscomm.com/about/billaddress.aspx.

SECTION 6 - MISCELLANEOUS CHARGES, (CONT'D)

- 6.10 Facilities Charge (applicable only in Colorado, Iowa, Minnesota, Montana, Nebraska, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee or Wyoming) (C)
(C)

The Facilities Charge provides for delivery of high quality services, including connecting customers to the network, customer service and network monitoring, updating operational systems, and the construction of a facilities-based network. The Facilities Charge is applied to each line. A Supplementary Facilities Charge is also applied to each business line where there's more than one business line at the physical location. Long Distance-only numbers are subject to a Facilities Charge where there is more than one business line at the physical location.

The Supplementary Facilities Charge will be discounted on each business line by \$1.99 per month (Discount 1) where your relationship with Access meets both of the following requirements:

- has a contract with Access Integrated Networks, and
- uses Access Integrated Networks Interstate Long Distance

Where another Interstate Long Distance carrier other than Access Integrated Networks has been selected, a \$3.99 discount per month applies to the Supplementary Facilities Charge (Discount 2).

| <u>Charge</u> | <u>MRC</u> |
|---------------------------------|--|
| Facilities Charge | \$6.42 on each Business line \$7.11 on each Residential line |
| | \$3.99 on each applicable Long Distance-only number |
| Supplementary Facilities Charge | \$6.63 on each applicable Business Line \$3.99 on each applicable Long Distance-only number |
| - Discount 1 | (\$1.99) |
| - Discount 2 | (\$3.99) |

- 6.11 Carrier Access Recovery Charge (applicable only in Colorado, Iowa, Minnesota, Montana, Nebraska, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee or Wyoming) (C)
(C)

The Carrier Access Recovery Charge funds a contribution towards higher costs of interconnection with other carriers, due to the ongoing shift of network cost recovery from carrier-billed access services.

| | |
|--------------------------------|--------|
| Carrier Access Recovery Charge | \$0.50 |
|--------------------------------|--------|

Exhibit K

*This tariff, Birch Communications Tariff FCC No. 1, replaces in its entirety,
Access Integrated Networks d/b/a Birch Communications Tariff FCC No. 3*

TITLE PAGE
ACCESS SERVICES TARIFF
OF
BIRCH COMMUNICATIONS

This tariff contains the descriptions, regulations, and rates applicable to the furnishing of service and facilities for telecommunications services provided by Birch Communications. This tariff is on file with the Federal Communications Commission (FCC). Copies may be inspected during normal business hours at the Company's principal place of business at 2300 Main St. Suite 600, Kansas City, MO 64108.

Wherever in this Tariff or its headings, the term "Company" or the name "Birch" appears, that shall mean and shall refer to Birch Communications.

SECTION 5 - SWITCHED ACCESS RATES

5.1 General

This section contains the specific regulations governing the rates and charges that apply for Switched Access Services:

There are three types of rates and charges that apply to Switched Access Service:

- Non-Recurring Charges: One-time charges that apply for a specific work activity.
- Recurring Charges: Fixed charges apply each month and depend on the number and type of facilities in place.
- Usage Charges: Charges that are applied on a per access minute basis. Usage rates are accumulated over a monthly period.

SECTION 5 - SWITCHED ACCESS RATES, (CONT'D)

5.2 Rate Categories

There are three rate categories which apply to Switched Access Service:

- End Office Switching (includes Common Line and Switched Transport)
- Toll-Free 8XX Data Base Access Service
- Optional Features

5.2.1 End Office Switching

The Company combines traditional per minute switched access rate elements into a single composite per minute rate element. The composite rate element includes the following access components:

A. Common Line

The Common Line component is related to the use of Company-provided end user common lines, and the terminations in the end office of end user lines, by customers and end users for intrastate access. (T)

B. Switched Transport

The Switched Transport component is related to the transmission and tandem switching facilities between the customer designated premises and the end office switch(es) where the customer's traffic is switched to originate or terminate the customer's communications. The Switched Transport component also includes transport between an end office which serves as host for a remote switching system or module (RSS or RSM) and the RSS or RSM or its equivalent.

C. End Office Switching

The End Office Switching component is related to the use of end office switching equipment, the terminations of calls at Company Intercept Operators or recordings, the Signaling Transfer Point (STP) costs, and the SS7 signaling function between the end office and the STP. (T)

SECTION 5 - SWITCHED ACCESS RATES, (CONT'D)

5.2 Rate Categories, (cont'd)

5.2.4 Toll-Free 8XX Data Base Query

The Toll-Free 8XX Data Base Query Charge, will apply for each Toll-Free 8XX call query received at the Company's (or its provider's) Toll-Free 8XX data base.

5.2.5 Switched Access Optional Features

Following are the various optional features that are available, where the technical capability exists:

- (a) Supervisory Signaling
- (b) Alternate Traffic Routing
- (c) Cut-Through
- (d) Service Class Routing
- (e) FGD with 950 Access
- (f) Signaling System Seven (SS7)
- (g) Basic Initial Address Message Delivery
- (h) Called Directory Number Delivery
- (i) Flexible Automatic Number Identification Delivery

Other optional features may be available on an Individual Case Basis (ICB).

SECTION 5 - SWITCHED ACCESS RATES, (CONT'D)

5.3 Billing of Access Minutes

When recording originating calls over FG Access with multi-frequency address signaling, usage measurement begins when the first wink supervisory signal is forwarded from the Customer's facilities. The measurement of originating call usage over FG Access ends when the originating FG Access entry switch receives disconnect supervision from either the originating End User's Local Switching Center - (indicating that the originating End User has disconnected), or the Customer's facilities, whichever is recognized first by the entry switch.

For terminating calls over FG Access with multi-frequency address signaling, the measurement of access minutes begins when a seizure signal is received from the Carrier's trunk group at the Point of Presence within the LATA. The measurement of terminating call usage over FG Access ends when a disconnect signal is received, indicating that either the originating or terminating user has disconnected.

When recording originating calls over FG Access with SS7 signaling, usage measurement begins with the transmission of the initial address message by the switch for direct trunk groups and with the receipt of an exit message by the switch for tandem trunk groups. The measurement of originating FG Access usage ends when the entry switch receives or sends a release message, whichever occurs first.

For terminating calls over FG Access with SS7 signaling, the measurement of access minutes begins when the terminating recording switch receives the initial address message from the terminating End User. On directly routed trunk groups or on tandem routed trunk groups, the Company switch receives the initial address message and sends the indication to the Customer in the form of an answer message. The measurement of terminating FG Access call usage ends when the entry switch receives or sends a release message, whichever occurs first.

SECTION 5 - SWITCHED ACCESS RATES, (CONT'D)

5.4 Rates and Charges

5.4.1 Common Line Access Service

A. Carrier Common Line Charge

- Per Originating Minute

Note 1

- Per Terminating Minute

Note 1

Note 1: All access minutes are billed at a single per minute access rate found in Section 5.4.3.A, Local Switching. This composite rate includes the elements traditionally billed as Carrier Common Line.

SECTION 5 - SWITCHED ACCESS RATES, (CONT'D)

5.4 Rates and Charges, (cont'd)

5.4.2 Switched Transport

| | | | | |
|----|--------------------------|--|---------------------|------------------------------|
| A. | Entrance Facility | | <u>Nonrecurring</u> | <u>Monthly Recurring</u> |
| | | First DS1 | ICB | ICB |
| | | Additional DS1s | ICB | ICB |
| B. | Direct-Trunked Transport | | <u>Nonrecurring</u> | <u>Monthly Recurring</u> |
| | | | | |
| | 1. Direct Transport | | | |
| | | Per DS1 | ICB | ICB |
| | | Per DS1, per Mile | ICB | ICB |
| | 2. Dedicated Trunk Port | | | |
| | | Per DS1 Port | ICB | ICB |
| C. | Common Transport | | | |
| | | 1. Installation | | <u>Nonrecurring</u> |
| | | First Trunk | | ICB |
| | | Additional Trunks | | ICB |
| | | 2. Tandem Switched, per Minute | | Note 1 |
| | | 3. Tandem Switched, per Minute, per Mile | | Note 1 |
| | | 4. Tandem Switching, per Minute | | Note 1 |
| | | 5. Common Multiplexing, per Minute | | Note 1 |
| | | 6. Common Trunk Port, per Minute | | Note 1 |

Note 1: All access minutes are billed at a single per minute access rate found in Section 5.4.3A, Local Switching. This composite rate includes the elements traditionally billed as Common Transport.

SECTION 5 - SWITCHED ACCESS RATES, (CONT'D)

5.4 Rates and Charges, (cont'd)

5.4.2 Switched Transport, (cont'd)

D. Transport Interconnection Charge

1. Originating, per Minute

Note 1

Note 1: All access minutes are billed at a single per minute access rate found in Section 5.4.3A, Local Switching. This composite rate includes the elements traditionally billed as Transport Interconnection Charge and Information Surcharge.

SECTION 5 - SWITCHED ACCESS RATES, (CONT'D)

5.4 Rates and Charges, (cont'd)

5.4.3 End Office Switching

A. Local Switching

- Per Minute

| | Service Provided via Commercial Agreement | | | | Service Provided via Company Facilities | |
|--|---|-----------------|----------------|-----------------|---|-----------------|
| | Tandem Connect | | Direct Connect | | Tandem Connect | |
| | Originating | Terminating | Originating | Terminating | Originating | Terminating |
| AT&T (former BellSouth) areas | \$0.005695 | \$0.00398380(R) | \$0.002962 | \$0.0020508(R) | \$0.003714 | \$0.002563(R) |
| AT&T (former SBC) areas | \$0.004006 | \$0.00284235(R) | \$0.002682 | \$0.00241835(R) | \$0.003599 | \$0.002435(R) |
| AT&T (former PacBell) areas | | | | | | |
| Zone 1 | \$0.008578 | \$0.00363035(R) | \$0.003089 | \$0.00283735(R) | \$0.007669 | \$0.002721(R) |
| Zone 2 | \$0.009430 | \$0.00448225(R) | \$0.003164 | \$0.00291225(R) | \$0.007844 | \$0.002896(R) |
| Zone 3 | \$0.010481 | \$0.00553280(R) | \$0.003169 | \$0.00291680(R) | \$0.008182 | \$0.003234(R) |
| AT&T (former Ameritech) areas | | | | | | |
| Zone 1 | \$0.005207 | \$0.00341670(R) | \$0.003478 | \$0.00205870(R) | \$0.003761 | \$0.002101(R) |
| Zone 2 | \$0.005253 | \$0.00346270(R) | \$0.003478 | \$0.00205870(R) | \$0.003775 | \$0.002115(R) |
| Zone 3 | \$0.005260 | \$0.00346970(R) | \$0.003478 | \$0.00205870(R) | \$0.003778 | \$0.002118(R) |
| Zone 4 | \$0.005394 | \$0.00360370(R) | \$0.003478 | \$0.00205870(R) | \$0.003780 | \$0.002120(R) |
| Zone 5 | \$0.005944 | \$0.00415370(R) | \$0.003478 | \$0.00205870(R) | \$0.003782 | \$0.002122(R) |
| Qwest | \$0.006080 | \$0.00431810(R) | \$0.002445 | \$0.00112410(R) | \$0.003357 | \$0.001749(R) |
| Verizon areas ¹ (CT, MA, NY, RI) | \$0.005692 | \$0.00350400(R) | \$0.002406 | \$0.00190600(R) | \$0.004118 | \$0.001930(R) |
| Verizon areas ¹ (DC, DE, MD, NJ, PA, VA) | \$0.005692 | \$0.00352900(R) | \$0.002406 | \$0.00193100(R) | \$0.004118 | \$0.00195500(R) |
| Fairpoint areas | \$0.005495 | \$0.00331700(R) | \$0.002264 | \$0.00098600(R) | \$0.003895 | \$0.00171700(R) |
| SNET areas | \$0.005872 | \$0.00320824(R) | \$0.003657 | \$0.00239324(R) | \$0.004714 | \$0.00205029(R) |
| CenturyLink (NV) areas | | | | | | |
| Zone 1 | \$0.007604 | \$0.00486940(R) | \$0.004593 | \$0.00206740(R) | \$0.005089 | \$0.002501(R) |
| Zone 2 | \$0.007708 | \$0.00497335(R) | \$0.004606 | \$0.00208035(R) | \$0.005126 | \$0.002538(R) |
| Zone 3 | \$0.007952 | \$0.00521780(R) | \$0.004629 | \$0.00210380(R) | \$0.005193 | \$0.002605(R) |

B. Information Surcharge, per Minute

Note 1

Note 1: All access minutes are billed at a single per minute access rate found in Section 5.4.3A, Local Switching. This composite rate includes the elements traditionally billed as Transport Interconnection Charge and Information Surcharge.

¹Equivalent to Verizon's "Composite Terminating End Office Charge"

SECTION 5 - SWITCHED ACCESS RATES, (CONT'D)

5.4 Rates and Charges, (cont'd)

5.4.4 Toll-Free 8XX Data Base Query

| | |
|-----------|----------|
| Per Query | \$.0075 |
|-----------|----------|

5.4.5 Switched Access Optional Features

All Optional Features are offered on an Individual Case Basis (ICB).

SECTION 6 - MISCELLANEOUS CHARGES

6.1 Access Recovery Fee

The purpose of the Access Recovery Fee is to partially offset the Company's costs to provide services, support its infrastructure, and recover costs associated with the federally mandated reduction in carrier access rates resulting from the FCC's 2011 Universal Service Fund/Inter-carrier Compensation Reform Order.

| <u>Charge</u> | <u>MRC</u> | |
|---------------------|---|-----|
| Access Recovery Fee | \$0.50 on each Business or Residential line | (I) |

6.2 [Reserved for Future Use]

SECTION 6 - MISCELLANEOUS CHARGES, (CONT'D)

6.3 Presubscribed Interexchange Carrier Charge

The Presubscribed Interexchange Carrier Charge (PICC) is a monthly, flat-rated charge assessed to the interexchange carrier for each presubscribed local exchange service line or trunk. The PICC will be based on a monthly snapshot of end user accounts. No fractional debits or credits will be created. Additionally PICCs will be assessed to end user customers on "no-PIC" lines.

Centrex lines will be billed 1/9th of the multiline business rate. For Centrex groups with fewer than 9 lines, the charge will be the multiline business rate divided by the number of lines in the Centrex group.

ISDN BRI lines will be charged the non-primary residential line rate, and ISDN PRI lines will be charged 5 times the multiline business rate.

| <u>Primary Residential or Single Line Business</u> per line or trunk | <u>Non-Primary Residential</u> per line or trunk | <u>Multiline Business</u> per line or trunk |
|--|--|---|
| \$0.00 | \$0.00 | \$2.50 |

SECTION 6 - MISCELLANEOUS CHARGES, (CONT'D)

6.4 PIC Change Charge

This is a "per request" charge billed for end-users making a change to their preferred long distance service provider. The charge is waived if the end-user is choosing Birch as their preferred provider.

Nonrecurring Charge per Change: \$ 15.00

6.5 [Reserved for Future Use]

SECTION 6 - MISCELLANEOUS CHARGES, (CONT'D)

6.6 Billing Name and Address

6.6.1 Service Description

Billing Name and Address (BNA) service provides account detail of the Company's customers to interexchange carriers, operator service providers, enhanced service providers, and any other provider of interstate telecommunications services.

6.6.2 General

- A. Upon acceptance of an order for BNA service, the Company will furnish account detail for each working number submitted. Account detail consists of current data base information including the end user's billing name and billing address.
- B. Only current information which resides in the Company's data base will be provided. Customers ordering BNA service must accept BNA account detail on an "as is" basis.
- C. The Company will specify the location where requests for BNA service are to be received, and the format in which the requests are to be provided.
- D. The subscribing customer must agree that BNA information will not be resold or otherwise provided to any other person, corporation, partnership or entity, other than Customer's authorized billing agent, and that Billing Name and Address shall be used by Customer or Customer's authorized billing agent solely for:
 - 1. Billing its customers for using Customer's telecommunications services.
 - 2. Any purpose associated with the equal access requirement of United States v. AT&T, 552 F. Supp. 131 (D.D.C. 1982).
 - 3. Verification of service orders of new customers, identification of customers who have moved to a new address, fraud prevention, and similar nonmarketing purposes.

SECTION 6 - MISCELLANEOUS CHARGES, (CONT'D)

6.6 Billing Name and Address (Cont'd)

6.6.2 General (Cont'd)

For calling card calls and collect and third party billed calls, Billing Name and Address for ANI service is not available on accounts of nonpublished/unlisted end users who, by request to the Company (which request may be submitted at any time), have specified that such information not be released.

E. Manual Request

1. At the customer's option, the Company will provide BNA via manual request procedures.
2. BNA service information will be provided by the Company in standard paper format via facsimile or first class U.S. mail.
3. Wherever possible, the Company will provide Billing Name and Address for ANI data no later than ten (10) business days from the date of receipt of the customer's request. Availability of data may be delayed if errors exist in the request received from the customer.
4. In situations where the customer requests more than forty (40) BNA records on a single order, the Company will provide the requested BNA information in a time frame mutually agreed to by the customer and the Company.

F. Mechanized Request

1. At the customer's option, the Company will provide BNA, subject to procedures established for Customer Account Record Exchange (CARE).
2. The customer will submit its requests through proper CARE procedures, as revised or amended.

SECTION 6 - MISCELLANEOUS CHARGES, (CONT'D)

6.6 Billing Name and Address (Cont'd)

6.6.3 Rate Regulations

The number of BNA records for which charges apply will be accumulated by the Company, and billed to the customer on a monthly basis at the rates set forth in 6.6.4 following.

6.6.4 Rates and Charges

| | | BNA Request <u>Manual</u> | BNA Request <u>Mechanized</u> |
|----------------------------------|-------------------|---------------------------------|-------------------------------------|
| Billing Name and Address for ANI | | | |
| - | Per ANI Requested | \$1.00 | ICB |

SECTION 6 - MISCELLANEOUS CHARGES, (CONT'D)

6.7 Local Number Portability (LNP)

Local Number Portability (LNP) allows, where facilities permit: (1) a local exchange telephone service customer to maintain the same Directory Number (DN) when changing from one telecommunications service provider to another while remaining at the same location; and (2) callers to complete calls to numbers that have been ported. This capability has been activated on a switch specific basis as specified in the Local Exchange Routing Guide (LERG) and/or the National Exchange Carrier Association Inc., F.C.C. No. 4. Tariff.

6.7.1 Local Number Portability Query Description

- A. LNP Query (LNPQ) is an advanced intelligent network capability which utilizes the common channel signaling network to query a database to secure network routing instructions before completion of a call. This database contains the Location Routing Number (LRN) that identifies the switch of the Local Service Provider that serves a customer with a ported DN. The LRN is used to direct the call to the correct network switching element for completion to the end user customer. Where more than one network is involved in completing the call, the network prior to the termination (i.e., the N-1 Network) is normally responsible for querying a LNP database to secure the LRN which is then used in routing the call. In some network arrangements, a third-party's tandem may be interposed between the N-1 carrier and the terminating network.
- B. Where the carrier does not perform a database query, and delivers a call directly to a switch in the Company's network for a NXX designated as a number portable code in the Local Exchange Routing Guide and National Exchange Carrier Association Inc. F.C.C. No. 4, the Company may perform a query for the carrier delivering the call to the Company and bill that carrier a LNP Query charge as described herein.
- C. When the Company is the first point of switching for terminating traffic to another local exchange carrier (e.g., a Company tandem switch), the Company will perform the query on behalf of the carrier delivering the call to the Company and bill that carrier a LNP Query charge as shown herein.

SECTION 6 - MISCELLANEOUS CHARGES, (CONT'D)

6.7 Local Number Portability (LNP) (Cont'd)

6.7.2 Local Number Portability Query Arrangements

- A. There are two arrangements of LNPQ available through the Company's network:
- LNP Query-Tandem
 - LNP Query-End Office
- B. Following is a detailed description of the available service application.
1. When the Company performs a query on behalf of a carrier delivering the call to the Company, the Company's end office or tandem switch will suspend call processing, formulate and launch a query via the common channel signaling network to a LNP database to obtain information necessary to route calls to numbers in portable NXX codes. When the necessary routing information has been returned from the LNP database to the switch originating the query, call processing is resumed and the call is routed to the correct network switching element for completion to the called party.
 2. When a Company tandem switch performs the query on behalf of a carrier, a LNP Query-Tandem charge is applied whenever the call is to a NXX designated as a number portable code in the Local Exchange Routing Guide and/or National Exchange Carrier Association Inc. F.C.C. No. 4. Tariff.
 3. When a Company end office switch performs the query on behalf of a carrier, a LNP Query-End Office charge will apply when the called Directory Number has ported out of the Company switch.

SECTION 6 - MISCELLANEOUS CHARGES, (CONT'D)

6.7 Local Number Portability (LNP) (Cont'd)

6.7.3 Limitations

LNP is used on a call-by-call basis only for routing calls to number portable NXX codes, and cannot be used for purposes other than those described herein unless expressly authorized in writing by the Company.

6.7.4 Local Number Portability Network Management

The Company will administer its network to ensure the provision of acceptable service levels to all telecommunications users of the Company's network services. The Company maintains the right to apply automated or manual protective controls which would generally be applied as a result of occurrences such as failure or overload of Company facilities, customer facilities, or other networks, natural disasters, mass calling, or national security demands.

6.7.5 LNPQ Rate Regulations

The rates and charges associated with LNPQ will be billed monthly, based on recorded usage. For billing purposes, each month is considered to have thirty (30) days.

A. LNPQ Rate Elements

The LNP Query rate element provides for the identification of the Location Routing Number information associated with the directory number including transport of the query to and from the database. This charge is assessed, regardless of the outcome of the query, at either a Tandem or End Office rate depending on where the query was launched.

1. LNP Query-Tandem query charges are assessed for each non-queried call delivered by a carrier to the Company Tandem to for any NXX designated as a number portable code in the Local Exchange Routing Guide and/or National Exchange Carrier Association F.C.C. No. 4. Tariff. This charge is also assessed when a carrier delivers calls to other LECs through a Company Tandem.

SECTION 6 - MISCELLANEOUS CHARGES, (CONT'D)

6.7 Local Number Portability (LNP) (Cont'd)

6.7.5 LNPQ Rate Regulations (Cont'd)

A. LNPQ Rate Elements (Cont'd)

2. LNP Query-End Office query charges are assessed to each non-queried call delivered to the Company by a carrier destined to a Directory Number that has been ported out of a Company end office switch, and the end office switch performs the query.

B. LNPQ Rates

| | |
|----------------------------------|---------|
| LNP Query-Tandem (per query) | \$0.012 |
| LNP Query-End Office (per query) | \$0.012 |

SECTION 6 - MISCELLANEOUS CHARGES, (CONT'D)

6.7 Local Number Portability (LNP) (Cont'd)

6.7.6 LNP End User Surcharge

- A. The Company will assess a monthly number-portability charge to end users served by LNP-capable switches. The charge applies to Company's end users served by LNP-capable switches effective with this tariff section, and for a period no longer than five years. The Company will assess the charge in each end office at such time as the end office becomes LNP capable.
- B. The monthly charge is assessed, as determined by the Company, to all end users or resellers of local exchange service. The LNP End User Surcharge is assessed on a per line basis except as set forth following:
1. When a customer is provided Integrated Services Digital Network-Primary Rate Interface (ISDN-PRI) that permits the provision of up to 24 voice-grade equivalent channels over a single T-1 facility, the LNP End User Surcharge for ISDN-PRI is assessed per T-1 facility;
 2. When a customer is provided PBX Service, the LNP End User Surcharge is assessed per PBX trunk;
 3. The LNP End User Surcharge is not assessed to Lifeline customers.
- C. LNP End User Surcharge Rates

The rates and charges associated with LNP End User Surcharge will be billed monthly.

| Basic, per line <u>per month</u> | ISDN-PRI, per T-1 <u>per month</u> | PBX, per trunk <u>per month</u> |
|-------------------------------------|---------------------------------------|------------------------------------|
| \$0.00 | \$0.00 | \$0.00 |

SECTION 6 - MISCELLANEOUS CHARGES, (CONT'D)

6.8 Regulatory Compliance Fee (applicable only in TN)

The Regulatory Compliance Fee covers costs associated with ongoing regulatory and compliance obligations, participation in regulatory proceedings, handling customer complaints with regulatory agencies, and negotiations with other regulated carriers.

Regulatory Compliance Fee \$0.75

6.9 Universal Service Fund

6.9.1 Interstate and International Revenue Factor

For the purpose of allocating a portion of bundled local exchange service revenue to the interstate jurisdiction, the company derives, on a quarterly basis, an Interstate and International Revenue Factor (IIF). This factor is the percentage interstate and international revenue comprises of total regulated revenue. Interstate and International revenue includes usage-based interstate/international long distance charges, and allowance-based usage priced out at standard usage rates. The IIF is reviewed quarterly and is available at www.accesscomm.com/about/billaddress.aspx.

6.9.2 Universal Service Fund Pass-Through

In connection with the FCC's Universal Service Orders, Birch will pay a percentage of its retail revenues to support the Universal Service Fund (USF). Birch will pass-through the USF assessment to its customers by assessing a charge applicable against all retail interstate and international revenue, including usage and non-usage revenue. Retail interstate and international revenue will be derived, in part, by the company's IIF identified in section 6.9.1.

This surcharge is in addition to standard usage charges and any applicable service charges and surcharges associated with the Company's service. The Company's Universal Service Fee factor will match the relevant quarterly Universal Service Contribution Factor approved by the FCC rounded up to the nearest tenth of a percent. Universal Service Contribution Factors are available at <http://www.fcc.gov/encyclopedia/contribution-factor-quarterly-filings-universal-service-fund-usf-management-support>.

(T)
(T)

SECTION 6 - MISCELLANEOUS CHARGES, (CONT'D)

6.9 Universal Service Fund (Cont'd)

6.9.2 Universal Service Fund Pass-Through (Cont'd)

Using these special numbers, the USF charge on each customer's bill will be calculated as follows (except customers in Colorado, Iowa, Minnesota, Montana, Nebraska, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee or Wyoming):

(C)
(C)

$$\text{USF(A)} = \text{Quarterly Universal Service Fee Factor} \times \text{Sum of } [(\text{Line or Package Price} + \text{Recurring Feature Charges} + \text{Facilities Charge/s} + \text{Regulatory Compliance Fee} + \text{Carrier Access Recovery Charge}) \times \text{IIF}] + \text{Interstate LD Charges} + \text{International LD Charges}]$$

$$\text{USF(B)} = \text{Quarterly Universal Service Fee Factor} \times \text{USF(A)}$$

$$\text{USF} = \text{total USF charge} = \text{USF(A)} + \text{USF(B)}$$

For customers in Colorado, Iowa, Minnesota, Montana, Nebraska, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee or Wyoming, the USF charge on each customer's bill will be calculated as follows:

(C)
(C)

$$\text{USF(A)} = \text{Quarterly Universal Service Fee Factor} \times \text{Sum of } [\text{Facilities Charge/s} + \text{Regulatory Compliance Fee} + \text{Carrier Access Recovery Charge} + \text{Interstate LD Charges} + \text{International LD Charges} + \{\text{PF\%} \times \text{Package Price}\}]$$

$$\text{USF(B)} = \text{Quarterly Universal Service Fee Factor} \times \text{USF(A)}$$

$$\text{USF} = \text{total USF charge} = \text{USF(A)} + \text{USF(B)}$$

Where Package Factor (PF) = the percentage of the Package Price that comprises unbilled interstate minutes as measured across all Package lines. The PF is reviewed quarterly and is available at www.accesscomm.com/about/billaddress.aspx.

SECTION 6 - MISCELLANEOUS CHARGES, (CONT'D)

- 6.10 Facilities Charge (applicable only in Colorado, Iowa, Minnesota, Montana, Nebraska, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee or Wyoming) (C)
(C)

The Facilities Charge provides for delivery of high quality services, including connecting customers to the network, customer service and network monitoring, updating operational systems, and the construction of a facilities-based network. The Facilities Charge is applied to each line. A Supplementary Facilities Charge is also applied to each business line where there's more than one business line at the physical location. Long Distance-only numbers are subject to a Facilities Charge where there is more than one business line at the physical location.

The Supplementary Facilities Charge will be discounted on each business line by \$1.99 per month (Discount 1) where your relationship with Access meets both of the following requirements:

- has a contract with Access Integrated Networks, and
- uses Access Integrated Networks Interstate Long Distance

Where another Interstate Long Distance carrier other than Access Integrated Networks has been selected, a \$3.99 discount per month applies to the Supplementary Facilities Charge (Discount 2).

| <u>Charge</u> | <u>MRC</u> |
|---------------------------------|--|
| Facilities Charge | \$6.42 on each Business line \$7.11 on each Residential line \$3.99 on each applicable Long Distance-only number |
| Supplementary Facilities Charge | \$6.63 on each applicable Business Line \$3.99 on each applicable Long Distance-only number |
| - Discount 1 | (\$1.99) |
| - Discount 2 | (\$3.99) |

- 6.11 Carrier Access Recovery Charge (applicable only in Colorado, Iowa, Minnesota, Montana, Nebraska, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee or Wyoming) (C)
(C)

The Carrier Access Recovery Charge funds a contribution towards higher costs of interconnection with other carriers, due to the ongoing shift of network cost recovery from carrier-billed access services.

| | |
|--------------------------------|--------|
| Carrier Access Recovery Charge | \$0.50 |
|--------------------------------|--------|

Exhibit L

*This tariff, Birch Communications Tariff FCC No. 1, replaces in its entirety,
Access Integrated Networks d/b/a Birch Communications Tariff FCC No. 3*

TITLE PAGE
ACCESS SERVICES TARIFF
OF
BIRCH COMMUNICATIONS

This tariff contains the descriptions, regulations, and rates applicable to the furnishing of service and facilities for telecommunications services provided by Birch Communications. This tariff is on file with the Federal Communications Commission (FCC). Copies may be inspected during normal business hours at the Company's principal place of business at 2300 Main St. Suite 600, Kansas City, MO 64108.

Wherever in this Tariff or its headings, the term "Company" or the name "Birch" appears, that shall mean and shall refer to Birch Communications.

SECTION 5 - SWITCHED ACCESS RATES

5.1 General

This section contains the specific regulations governing the rates and charges that apply for Switched Access Services:

There are three types of rates and charges that apply to Switched Access Service:

- Non-Recurring Charges: One-time charges that apply for a specific work activity.
- Recurring Charges: Fixed charges apply each month and depend on the number and type of facilities in place.
- Usage Charges: Charges that are applied on a per access minute basis. Usage rates are accumulated over a monthly period.

SECTION 5 - SWITCHED ACCESS RATES, (CONT'D)

5.2 Rate Categories

There are three rate categories which apply to Switched Access Service:

- End Office Switching (includes Common Line and Switched Transport)
- Toll-Free 8XX Data Base Access Service
- Optional Features

5.2.1 End Office Switching

The Company combines traditional per minute switched access rate elements into a single composite per minute rate element. The composite rate element includes the following access components:

A. Common Line

The Common Line component is related to the use of Company-provided end user common lines, and the terminations in the end office of end user lines, by customers and end users for intrastate access. (T)

B. Switched Transport

The Switched Transport component is related to the transmission and tandem switching facilities between the customer designated premises and the end office switch(es) where the customer's traffic is switched to originate or terminate the customer's communications. The Switched Transport component also includes transport between an end office which serves as host for a remote switching system or module (RSS or RSM) and the RSS or RSM or its equivalent.

C. End Office Switching

The End Office Switching component is related to the use of end office switching equipment, the terminations of calls at Company Intercept Operators or recordings, the Signaling Transfer Point (STP) costs, and the SS7 signaling function between the end office and the STP. (T)

SECTION 5 - SWITCHED ACCESS RATES, (CONT'D)

5.2 Rate Categories, (cont'd)

5.2.4 Toll-Free 8XX Data Base Query

The Toll-Free 8XX Data Base Query Charge, will apply for each Toll-Free 8XX call query received at the Company's (or its provider's) Toll-Free 8XX data base.

5.2.5 Switched Access Optional Features

Following are the various optional features that are available, where the technical capability exists:

- (a) Supervisory Signaling
- (b) Alternate Traffic Routing
- (c) Cut-Through
- (d) Service Class Routing
- (e) FGD with 950 Access
- (f) Signaling System Seven (SS7)
- (g) Basic Initial Address Message Delivery
- (h) Called Directory Number Delivery
- (i) Flexible Automatic Number Identification Delivery

Other optional features may be available on an Individual Case Basis (ICB).

SECTION 5 - SWITCHED ACCESS RATES, (CONT'D)

5.3 Billing of Access Minutes

When recording originating calls over FG Access with multi-frequency address signaling, usage measurement begins when the first wink supervisory signal is forwarded from the Customer's facilities. The measurement of originating call usage over FG Access ends when the originating FG Access entry switch receives disconnect supervision from either the originating End User's Local Switching Center - (indicating that the originating End User has disconnected), or the Customer's facilities, whichever is recognized first by the entry switch.

For terminating calls over FG Access with multi-frequency address signaling, the measurement of access minutes begins when a seizure signal is received from the Carrier's trunk group at the Point of Presence within the LATA. The measurement of terminating call usage over FG Access ends when a disconnect signal is received, indicating that either the originating or terminating user has disconnected.

When recording originating calls over FG Access with SS7 signaling, usage measurement begins with the transmission of the initial address message by the switch for direct trunk groups and with the receipt of an exit message by the switch for tandem trunk groups. The measurement of originating FG Access usage ends when the entry switch receives or sends a release message, whichever occurs first.

For terminating calls over FG Access with SS7 signaling, the measurement of access minutes begins when the terminating recording switch receives the initial address message from the terminating End User. On directly routed trunk groups or on tandem routed trunk groups, the Company switch receives the initial address message and sends the indication to the Customer in the form of an answer message. The measurement of terminating FG Access call usage ends when the entry switch receives or sends a release message, whichever occurs first.

SECTION 5 - SWITCHED ACCESS RATES, (CONT'D)

5.4 Rates and Charges

5.4.1 Common Line Access Service

A. Carrier Common Line Charge

- Per Originating Minute

Note 1

- Per Terminating Minute

Note 1

Note 1: All access minutes are billed at a single per minute access rate found in Section 5.4.3.A, Local Switching. This composite rate includes the elements traditionally billed as Carrier Common Line.

SECTION 5 - SWITCHED ACCESS RATES, (CONT'D)

5.4 Rates and Charges, (cont'd)

5.4.2 Switched Transport

| | | | | |
|----|--------------------------|--|---------------------|--------------------------|
| A. | Entrance Facility | | <u>Nonrecurring</u> | <u>Monthly Recurring</u> |
| | | First DS1 | ICB | ICB |
| | | Additional DS1s | ICB | ICB |
| B. | Direct-Trunked Transport | | <u>Nonrecurring</u> | <u>Monthly Recurring</u> |
| | | | | |
| | 1. Direct Transport | | | |
| | | Per DS1 | ICB | ICB |
| | | Per DS1, per Mile | ICB | ICB |
| | 2. Dedicated Trunk Port | | | |
| | | Per DS1 Port | ICB | ICB |
| C. | Common Transport | | | |
| | | 1. Installation | | <u>Nonrecurring</u> |
| | | First Trunk | | ICB |
| | | Additional Trunks | | ICB |
| | | 2. Tandem Switched, per Minute | | Note 1 |
| | | 3. Tandem Switched, per Minute, per Mile | | Note 1 |
| | | 4. Tandem Switching, per Minute | | Note 1 |
| | | 5. Common Multiplexing, per Minute | | Note 1 |
| | | 6. Common Trunk Port, per Minute | | Note 1 |

Note 1: All access minutes are billed at a single per minute access rate found in Section 5.4.3A, Local Switching. This composite rate includes the elements traditionally billed as Common Transport.

SECTION 5 - SWITCHED ACCESS RATES, (CONT'D)

5.4 Rates and Charges, (cont'd)

5.4.2 Switched Transport, (cont'd)

D. Transport Interconnection Charge

1. Originating, per Minute

Note 1

Note 1: All access minutes are billed at a single per minute access rate found in Section 5.4.3A, Local Switching. This composite rate includes the elements traditionally billed as Transport Interconnection Charge and Information Surcharge.

SECTION 5 - SWITCHED ACCESS RATES, (CONT'D)

5.4 Rates and Charges, (cont'd)

5.4.3 End Office Switching

A. Local Switching

- Per Minute

| | Service Provided via Commercial Agreement | | | | Service Provided via Company Facilities | |
|--|---|------------------|----------------|------------------|---|-----------------|
| | Tandem Connect | | Direct Connect | | Tandem Connect | |
| | Originating | Terminating | Originating | Terminating | Originating | Terminating |
| AT&T (former BellSouth) areas | \$0.005695 | \$0.00290880 (R) | \$0.002962 | \$0.00097580 (R) | \$0.003714 | \$0.0014880 (R) |
| AT&T (former SBC) areas | \$0.004006 | \$0.00124335 (R) | \$0.002682 | \$0.00081935 (R) | \$0.003599 | \$0.0008360 (R) |
| AT&T (former PacBell) areas | | | | | | |
| Zone 1 | \$0.008578 | \$0.00196235 (R) | \$0.003089 | \$0.00116935 (R) | \$0.007669 | \$0.0010530 (R) |
| Zone 2 | \$0.009430 | \$0.00281425 (R) | \$0.003164 | \$0.00124425 (R) | \$0.007844 | \$0.0012280 (R) |
| Zone 3 | \$0.010481 | \$0.00386480 (R) | \$0.003169 | \$0.00124880 (R) | \$0.008182 | \$0.0015660 (R) |
| AT&T (former Ameritech) areas | | | | | | |
| Zone 1 | \$0.005207 | \$0.00228970 (R) | \$0.003478 | \$0.00093170 (R) | \$0.003761 | \$0.0009740 (R) |
| Zone 2 | \$0.005253 | \$0.00233570 (R) | \$0.003478 | \$0.00093170 (R) | \$0.003775 | \$0.0009880 (R) |
| Zone 3 | \$0.005260 | \$0.00234270 (R) | \$0.003478 | \$0.00093170 (R) | \$0.003778 | \$0.0009910 (R) |
| Zone 4 | \$0.005394 | \$0.00247670 (R) | \$0.003478 | \$0.00093170 (R) | \$0.003780 | \$0.0009930 (R) |
| Zone 5 | \$0.005944 | \$0.00302670 (R) | \$0.003478 | \$0.00093170 (R) | \$0.003782 | \$0.0009950 (R) |
| CenturyLink (former Qwest) areas | \$0.006080 | \$0.00379800 (R) | \$0.002445 | \$0.00091000 (R) | \$0.003357 | \$0.0013360 (R) |
| Verizon areas ¹ (CT, MA, NY, RI) | \$0.005692 | \$0.00229800 (R) | \$0.002406 | \$0.00070000 (R) | \$0.004118 | \$0.0007240 (R) |
| Verizon areas ¹ (DC, DE, MD, NJ, PA, VA) | \$0.005692 | \$0.00229800 (R) | \$0.002406 | \$0.00070000 (R) | \$0.004118 | \$0.0007240 (R) |
| Fairpoint areas | \$0.005495 | \$0.00233600 (R) | \$0.002264 | \$0.00070000 (R) | \$0.003895 | \$0.0007360 (R) |
| Frontier WV (former Verizon) areas | \$0.005562 | \$0.00240800 | \$0.002273 | \$0.00070000 | \$0.003878 | \$0.0007240 |
| Frontier (former SNET areas) | \$0.005872 | \$0.00203895 (R) | \$0.003657 | \$0.00122395 (R) | \$0.004714 | \$0.0008810 (R) |
| CenturyLink (NV) areas | | | | | | |
| Zone 1 | \$0.007604 | \$0.00355660 (R) | \$0.004593 | \$0.00090860 (R) | \$0.005089 | \$0.0012960 (R) |
| Zone 2 | \$0.007708 | \$0.00366055 (R) | \$0.004606 | \$0.00092155 (R) | \$0.005126 | \$0.0013330 (R) |
| Zone 3 | \$0.007952 | \$0.00390500 (R) | \$0.004629 | \$0.00094500 (R) | \$0.005193 | \$0.0014000 (R) |
| Hawaiian Tel areas | \$0.00494933 | \$0.00277260 | \$0.00228393 | \$0.00091700 | \$0.0032489 | \$0.0013556 |

(T)

(N)

(T)

(N)

B. Information Surcharge, per Minute

Note 1

Note 1: All access minutes are billed at a single per minute access rate found in Section 5.4.3A, Local Switching. This composite rate includes the elements traditionally billed as Transport Interconnection Charge and Information Surcharge.

¹Equivalent to Verizon's "Composite Terminating End Office Charge"

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SECTION 5 - SWITCHED ACCESS RATES, (CONT'D)

5.4 Rates and Charges, (cont'd)

5.4.4 Toll-Free 8XX Data Base Query

| | |
|-----------|----------|
| Per Query | \$.0075 |
|-----------|----------|

5.4.5 Switched Access Optional Features

All Optional Features are offered on an Individual Case Basis (ICB).

SECTION 6 - MISCELLANEOUS CHARGES

6.1 Access Recovery Fee

The purpose of the Access Recovery Fee is to partially offset the Company's costs to provide services, support its infrastructure, and recover costs associated with the federally mandated reduction in carrier access rates resulting from the FCC's 2011 Universal Service Fund/Intercarrier Compensation Reform Order.

| <u>Charge</u> | <u>MRC</u> | |
|---------------------|---|-----|
| Access Recovery Fee | \$0.74 on each Business or Residential line | (I) |

6.2 [Reserved for Future Use]

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SECTION 6 - MISCELLANEOUS CHARGES, (CONT'D)

6.3 Presubscribed Interexchange Carrier Charge

The Presubscribed Interexchange Carrier Charge (PICC) is a monthly, flat-rated charge assessed to the interexchange carrier for each presubscribed local exchange service line or trunk. The PICC will be based on a monthly snapshot of end user accounts. No fractional debits or credits will be created. Additionally PICCs will be assessed to end user customers on "no-PIC" lines.

Centrex lines will be billed 1/9th of the multiline business rate. For Centrex groups with fewer than 9 lines, the charge will be the multiline business rate divided by the number of lines in the Centrex group.

ISDN BRI lines will be charged the non-primary residential line rate, and ISDN PRI lines will be charged 5 times the multiline business rate.

| <u>Primary Residential or Single Line Business</u> per line or trunk | <u>Non-Primary Residential</u> per line or trunk | <u>Multiline Business</u> per line or trunk |
|--|--|---|
| \$0.00 | \$0.00 | \$2.50 |

SECTION 6 - MISCELLANEOUS CHARGES, (CONT'D)

6.4 PIC Change Charge

This is a "per request" charge billed for end-users making a change to their preferred long distance service provider. The charge is waived if the end-user is choosing Birch as their preferred provider.

Nonrecurring Charge per Change: \$ 15.00

6.5 [Reserved for Future Use]

SECTION 6 - MISCELLANEOUS CHARGES, (CONT'D)

6.6 Billing Name and Address

6.6.1 Service Description

Billing Name and Address (BNA) service provides account detail of the Company's customers to interexchange carriers, operator service providers, enhanced service providers, and any other provider of interstate telecommunications services.

6.6.2 General

- A. Upon acceptance of an order for BNA service, the Company will furnish account detail for each working number submitted. Account detail consists of current data base information including the end user's billing name and billing address.
- B. Only current information which resides in the Company's data base will be provided. Customers ordering BNA service must accept BNA account detail on an "as is" basis.
- C. The Company will specify the location where requests for BNA service are to be received, and the format in which the requests are to be provided.
- D. The subscribing customer must agree that BNA information will not be resold or otherwise provided to any other person, corporation, partnership or entity, other than Customer's authorized billing agent, and that Billing Name and Address shall be used by Customer or Customer's authorized billing agent solely for:
 - 1. Billing its customers for using Customer's telecommunications services.
 - 2. Any purpose associated with the equal access requirement of United States v. AT&T, 552 F. Supp. 131 (D.D.C. 1982).
 - 3. Verification of service orders of new customers, identification of customers who have moved to a new address, fraud prevention, and similar nonmarketing purposes.

SECTION 6 - MISCELLANEOUS CHARGES, (CONT'D)

6.6 Billing Name and Address (Cont'd)

6.6.2 General (Cont'd)

For calling card calls and collect and third party billed calls, Billing Name and Address for ANI service is not available on accounts of nonpublished/unlisted end users who, by request to the Company (which request may be submitted at any time), have specified that such information not be released.

E. Manual Request

1. At the customer's option, the Company will provide BNA via manual request procedures.
2. BNA service information will be provided by the Company in standard paper format via facsimile or first class U.S. mail.
3. Wherever possible, the Company will provide Billing Name and Address for ANI data no later than ten (10) business days from the date of receipt of the customer's request. Availability of data may be delayed if errors exist in the request received from the customer.
4. In situations where the customer requests more than forty (40) BNA records on a single order, the Company will provide the requested BNA information in a time frame mutually agreed to by the customer and the Company.

F. Mechanized Request

1. At the customer's option, the Company will provide BNA, subject to procedures established for Customer Account Record Exchange (CARE).
2. The customer will submit its requests through proper CARE procedures, as revised or amended.

SECTION 6 - MISCELLANEOUS CHARGES, (CONT'D)

6.6 Billing Name and Address (Cont'd)

6.6.3 Rate Regulations

The number of BNA records for which charges apply will be accumulated by the Company, and billed to the customer on a monthly basis at the rates set forth in 6.6.4 following.

6.6.4 Rates and Charges

| | | BNA Request <u>Manual</u> | BNA Request <u>Mechanized</u> |
|----------------------------------|-------------------|---------------------------------|-------------------------------------|
| Billing Name and Address for ANI | | | |
| - | Per ANI Requested | \$1.00 | ICB |

SECTION 6 - MISCELLANEOUS CHARGES, (CONT'D)

6.7 Local Number Portability (LNP)

Local Number Portability (LNP) allows, where facilities permit: (1) a local exchange telephone service customer to maintain the same Directory Number (DN) when changing from one telecommunications service provider to another while remaining at the same location; and (2) callers to complete calls to numbers that have been ported. This capability has been activated on a switch specific basis as specified in the Local Exchange Routing Guide (LERG) and/or the National Exchange Carrier Association Inc., F.C.C. No. 4. Tariff.

6.7.1 Local Number Portability Query Description

- A. LNP Query (LNPQ) is an advanced intelligent network capability which utilizes the common channel signaling network to query a database to secure network routing instructions before completion of a call. This database contains the Location Routing Number (LRN) that identifies the switch of the Local Service Provider that serves a customer with a ported DN. The LRN is used to direct the call to the correct network switching element for completion to the end user customer. Where more than one network is involved in completing the call, the network prior to the termination (i.e., the N-1 Network) is normally responsible for querying a LNP database to secure the LRN which is then used in routing the call. In some network arrangements, a third-party's tandem may be interposed between the N-1 carrier and the terminating network.
- B. Where the carrier does not perform a database query, and delivers a call directly to a switch in the Company's network for a NXX designated as a number portable code in the Local Exchange Routing Guide and National Exchange Carrier Association Inc. F.C.C. No. 4, the Company may perform a query for the carrier delivering the call to the Company and bill that carrier a LNP Query charge as described herein.
- C. When the Company is the first point of switching for terminating traffic to another local exchange carrier (e.g., a Company tandem switch), the Company will perform the query on behalf of the carrier delivering the call to the Company and bill that carrier a LNP Query charge as shown herein.

SECTION 6 - MISCELLANEOUS CHARGES, (CONT'D)

6.7 Local Number Portability (LNP) (Cont'd)

6.7.2 Local Number Portability Query Arrangements

- A. There are two arrangements of LNPQ available through the Company's network:
- LNP Query-Tandem
 - LNP Query-End Office
- B. Following is a detailed description of the available service application.
1. When the Company performs a query on behalf of a carrier delivering the call to the Company, the Company's end office or tandem switch will suspend call processing, formulate and launch a query via the common channel signaling network to a LNP database to obtain information necessary to route calls to numbers in portable NXX codes. When the necessary routing information has been returned from the LNP database to the switch originating the query, call processing is resumed and the call is routed to the correct network switching element for completion to the called party.
 2. When a Company tandem switch performs the query on behalf of a carrier, a LNP Query-Tandem charge is applied whenever the call is to a NXX designated as a number portable code in the Local Exchange Routing Guide and/or National Exchange Carrier Association Inc. F.C.C. No. 4. Tariff.
 3. When a Company end office switch performs the query on behalf of a carrier, a LNP Query-End Office charge will apply when the called Directory Number has ported out of the Company switch.

SECTION 6 - MISCELLANEOUS CHARGES, (CONT'D)

6.7 Local Number Portability (LNP) (Cont'd)

6.7.3 Limitations

LNP is used on a call-by-call basis only for routing calls to number portable NXX codes, and cannot be used for purposes other than those described herein unless expressly authorized in writing by the Company.

6.7.4 Local Number Portability Network Management

The Company will administer its network to ensure the provision of acceptable service levels to all telecommunications users of the Company's network services. The Company maintains the right to apply automated or manual protective controls which would generally be applied as a result of occurrences such as failure or overload of Company facilities, customer facilities, or other networks, natural disasters, mass calling, or national security demands.

6.7.5 LNPQ Rate Regulations

The rates and charges associated with LNPQ will be billed monthly, based on recorded usage. For billing purposes, each month is considered to have thirty (30) days.

A. LNPQ Rate Elements

The LNP Query rate element provides for the identification of the Location Routing Number information associated with the directory number including transport of the query to and from the database. This charge is assessed, regardless of the outcome of the query, at either a Tandem or End Office rate depending on where the query was launched.

1. LNP Query-Tandem query charges are assessed for each non-queried call delivered by a carrier to the Company Tandem to for any NXX designated as a number portable code in the Local Exchange Routing Guide and/or National Exchange Carrier Association F.C.C. No. 4. Tariff. This charge is also assessed when a carrier delivers calls to other LECs through a Company Tandem.

SECTION 6 - MISCELLANEOUS CHARGES, (CONT'D)

6.7 Local Number Portability (LNP) (Cont'd)

6.7.5 LNPQ Rate Regulations (Cont'd)

A. LNPQ Rate Elements (Cont'd)

2. LNP Query-End Office query charges are assessed to each non-queried call delivered to the Company by a carrier destined to a Directory Number that has been ported out of a Company end office switch, and the end office switch performs the query.

B. LNPQ Rates

| | |
|----------------------------------|---------|
| LNP Query-Tandem (per query) | \$0.012 |
| LNP Query-End Office (per query) | \$0.012 |

SECTION 6 - MISCELLANEOUS CHARGES, (CONT'D)

6.7 Local Number Portability (LNP) (Cont'd)

6.7.6 LNP End User Surcharge

- A. The Company will assess a monthly number-portability charge to end users served by LNP-capable switches. The charge applies to Company's end users served by LNP-capable switches effective with this tariff section, and for a period no longer than five years. The Company will assess the charge in each end office at such time as the end office becomes LNP capable.
- B. The monthly charge is assessed, as determined by the Company, to all end users or resellers of local exchange service. The LNP End User Surcharge is assessed on a per line basis except as set forth following:
1. When a customer is provided Integrated Services Digital Network-Primary Rate Interface (ISDN-PRI) that permits the provision of up to 24 voice-grade equivalent channels over a single T-1 facility, the LNP End User Surcharge for ISDN-PRI is assessed per T-1 facility;
 2. When a customer is provided PBX Service, the LNP End User Surcharge is assessed per PBX trunk;
 3. The LNP End User Surcharge is not assessed to Lifeline customers.
- C. LNP End User Surcharge Rates

The rates and charges associated with LNP End User Surcharge will be billed monthly.

| Basic, per line <u>per month</u> | ISDN-PRI, per T-1 <u>per month</u> | PBX, per trunk <u>per month</u> |
|-------------------------------------|---------------------------------------|------------------------------------|
| \$0.00 | \$0.00 | \$0.00 |

SECTION 6 - MISCELLANEOUS CHARGES, (CONT'D)

6.8 Regulatory Compliance Fee (applicable only in TN)

The Regulatory Compliance Fee covers costs associated with ongoing regulatory and compliance obligations, participation in regulatory proceedings, handling customer complaints with regulatory agencies, and negotiations with other regulated carriers.

Regulatory Compliance Fee \$0.75

6.9 Universal Service Fund

6.9.1 Interstate and International Revenue Factor

For the purpose of allocating a portion of bundled local exchange service revenue to the interstate jurisdiction, the company derives, on a quarterly basis, an Interstate and International Revenue Factor (IIF). This factor is the percentage interstate and international revenue comprises of total regulated revenue. Interstate and International revenue includes usage-based interstate/international long distance charges, and allowance-based usage priced out at standard usage rates. The IIF is reviewed quarterly and is available at www.accesscomm.com/about/billaddress.aspx.

6.9.2 Universal Service Fund Pass-Through

In connection with the FCC's Universal Service Orders, Birch will pay a percentage of its retail revenues to support the Universal Service Fund (USF). Birch will pass-through the USF assessment to its customers by assessing a charge applicable against all retail interstate and international revenue, including usage and non-usage revenue. Retail interstate and international revenue will be derived, in part, by the company's IIF identified in section 6.9.1.

This surcharge is in addition to standard usage charges and any applicable service charges and surcharges associated with the Company's service. The Company's Universal Service Fee factor will match the relevant quarterly Universal Service Contribution Factor approved by the FCC rounded up to the nearest tenth of a percent. Universal Service Contribution Factors are available at <http://www.fcc.gov/encyclopedia/contribution-factor-quarterly-filings-universal-service-fund-usf-management-support>.

(T)
(T)

SECTION 6 - MISCELLANEOUS CHARGES, (CONT'D)

6.9 Universal Service Fund (Cont'd)

6.9.2 Universal Service Fund Pass-Through (Cont'd)

Using these special numbers, the USF charge on each customer's bill will be calculated as follows (except customers in Colorado, Iowa, Minnesota, Montana, Nebraska, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee or Wyoming):

(C)
(C)

$$\text{USF(A)} = \text{Quarterly Universal Service Fee Factor} \times \text{Sum of } [(\text{Line or Package Price} + \text{Recurring Feature Charges} + \text{Facilities Charge/s} + \text{Regulatory Compliance Fee} + \text{Carrier Access Recovery Charge}) \times \text{IIF}] + \text{Interstate LD Charges} + \text{International LD Charges}]$$

$$\text{USF(B)} = \text{Quarterly Universal Service Fee Factor} \times \text{USF(A)}$$

$$\text{USF} = \text{total USF charge} = \text{USF(A)} + \text{USF(B)}$$

For customers in Colorado, Iowa, Minnesota, Montana, Nebraska, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee or Wyoming, the USF charge on each customer's bill will be calculated as follows:

(C)
(C)

$$\text{USF(A)} = \text{Quarterly Universal Service Fee Factor} \times \text{Sum of } [\text{Facilities Charge/s} + \text{Regulatory Compliance Fee} + \text{Carrier Access Recovery Charge} + \text{Interstate LD Charges} + \text{International LD Charges} + \{\text{PF\%} \times \text{Package Price}\}]$$

$$\text{USF(B)} = \text{Quarterly Universal Service Fee Factor} \times \text{USF(A)}$$

$$\text{USF} = \text{total USF charge} = \text{USF(A)} + \text{USF(B)}$$

Where Package Factor (PF) = the percentage of the Package Price that comprises unbilled interstate minutes as measured across all Package lines. The PF is reviewed quarterly and is available at www.accesscomm.com/about/billaddress.aspx.

SECTION 6 - MISCELLANEOUS CHARGES, (CONT'D)

- 6.10 Facilities Charge (applicable only in Colorado, Iowa, Minnesota, Montana, Nebraska, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee or Wyoming) (C)
(C)

The Facilities Charge provides for delivery of high quality services, including connecting customers to the network, customer service and network monitoring, updating operational systems, and the construction of a facilities-based network. The Facilities Charge is applied to each line. A Supplementary Facilities Charge is also applied to each business line where there's more than one business line at the physical location. Long Distance-only numbers are subject to a Facilities Charge where there is more than one business line at the physical location.

The Supplementary Facilities Charge will be discounted on each business line by \$1.99 per month (Discount 1) where your relationship with Access meets both of the following requirements:

- has a contract with Access Integrated Networks, and
- uses Access Integrated Networks Interstate Long Distance

Where another Interstate Long Distance carrier other than Access Integrated Networks has been selected, a \$3.99 discount per month applies to the Supplementary Facilities Charge (Discount 2).

| <u>Charge</u> | <u>MRC</u> |
|---------------------------------|--|
| Facilities Charge | \$6.42 on each Business line \$7.11 on each Residential line \$3.99 on each applicable Long Distance-only number |
| Supplementary Facilities Charge | \$6.63 on each applicable Business Line \$3.99 on each applicable Long Distance-only number |
| - Discount 1 | (\$1.99) |
| - Discount 2 | (\$3.99) |

- 6.11 Carrier Access Recovery Charge (applicable only in Colorado, Iowa, Minnesota, Montana, Nebraska, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee or Wyoming) (C)
(C)

The Carrier Access Recovery Charge funds a contribution towards higher costs of interconnection with other carriers, due to the ongoing shift of network cost recovery from carrier-billed access services.

| | |
|--------------------------------|--------|
| Carrier Access Recovery Charge | \$0.50 |
|--------------------------------|--------|

Exhibit M

*This tariff, Birch Communications Tariff FCC No. 1, replaces in its entirety,
Access Integrated Networks d/b/a Birch Communications Tariff FCC No. 3*

TITLE PAGE
ACCESS SERVICES TARIFF
OF
BIRCH COMMUNICATIONS

This tariff contains the descriptions, regulations, and rates applicable to the furnishing of service and facilities for telecommunications services provided by Birch Communications. This tariff is on file with the Federal Communications Commission (FCC). Copies may be inspected during normal business hours at the Company's principal place of business at 2300 Main St. Suite 600, Kansas City, MO 64108.

Wherever in this Tariff or its headings, the term "Company" or the name "Birch" appears, that shall mean and shall refer to Birch Communications.

SECTION 5 - SWITCHED ACCESS RATES

5.1 General

This section contains the specific regulations governing the rates and charges that apply for Switched Access Services:

There are three types of rates and charges that apply to Switched Access Service:

- Non-Recurring Charges: One-time charges that apply for a specific work activity.
- Recurring Charges: Fixed charges apply each month and depend on the number and type of facilities in place.
- Usage Charges: Charges that are applied on a per access minute basis. Usage rates are accumulated over a monthly period.

SECTION 5 - SWITCHED ACCESS RATES, (CONT'D)

5.2 Rate Categories

There are three rate categories which apply to Switched Access Service:

- End Office Switching (includes Common Line and Switched Transport)
- Toll-Free 8XX Data Base Access Service
- Optional Features

5.2.1 End Office Switching

The Company combines traditional per minute switched access rate elements into a single composite per minute rate element. The composite rate element includes the following access components:

A. Common Line

The Common Line component is related to the use of Company-provided end user common lines, and the terminations in the end office of end user lines, by customers and end users for intrastate access.

B. Switched Transport

The Switched Transport component is related to the transmission and tandem switching facilities between the customer designated premises and the end office switch(es) where the customer's traffic is switched to originate or terminate the customer's communications. The Switched Transport component also includes transport between an end office which serves as host for a remote switching system or module (RSS or RSM) and the RSS or RSM or its equivalent.

The terminating switched transport rate schedules are bifurcated into "3rd Party" and "End Office" rates. The Company bills the End Office terminating switched transport rates, in accordance with Commission Rules 51.907(g)(2) and 51.907(g), for "terminating traffic traversing a tandem switch that the terminating carrier or its affiliates owns." All other terminating switched transport traffic is billed the 3rd Party terminating switched transport rates. (N)

C. End Office Switching

The End Office Switching component is related to the use of end office switching equipment, the terminations of calls at Company Intercept Operators or recordings, the Signaling Transfer Point (STP) costs, and the SS7 signaling function between the end office and the STP.

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by: Gordon P. Williams, Jr. – Senior Vice President & General Counsel
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SECTION 5 - SWITCHED ACCESS RATES, (CONT'D)

5.2 Rate Categories, (cont'd)

5.2.4 Toll-Free 8XX Data Base Query

The Toll-Free 8XX Data Base Query Charge, will apply for each Toll-Free 8XX call query received at the Company's (or its provider's) Toll-Free 8XX data base.

5.2.5 Switched Access Optional Features

Following are the various optional features that are available, where the technical capability exists:

- (a) Supervisory Signaling
- (b) Alternate Traffic Routing
- (c) Cut-Through
- (d) Service Class Routing
- (e) FGD with 950 Access
- (f) Signaling System Seven (SS7)
- (g) Basic Initial Address Message Delivery
- (h) Called Directory Number Delivery
- (i) Flexible Automatic Number Identification Delivery

Other optional features may be available on an Individual Case Basis (ICB).

SECTION 5 - SWITCHED ACCESS RATES, (CONT'D)

5.3 Billing of Access Minutes

When recording originating calls over FG Access with multi-frequency address signaling, usage measurement begins when the first wink supervisory signal is forwarded from the Customer's facilities. The measurement of originating call usage over FG Access ends when the originating FG Access entry switch receives disconnect supervision from either the originating End User's Local Switching Center - (indicating that the originating End User has disconnected), or the Customer's facilities, whichever is recognized first by the entry switch.

For terminating calls over FG Access with multi-frequency address signaling, the measurement of access minutes begins when a seizure signal is received from the Carrier's trunk group at the Point of Presence within the LATA. The measurement of terminating call usage over FG Access ends when a disconnect signal is received, indicating that either the originating or terminating user has disconnected.

When recording originating calls over FG Access with SS7 signaling, usage measurement begins with the transmission of the initial address message by the switch for direct trunk groups and with the receipt of an exit message by the switch for tandem trunk groups. The measurement of originating FG Access usage ends when the entry switch receives or sends a release message, whichever occurs first.

For terminating calls over FG Access with SS7 signaling, the measurement of access minutes begins when the terminating recording switch receives the initial address message from the terminating End User. On directly routed trunk groups or on tandem routed trunk groups, the Company switch receives the initial address message and sends the indication to the Customer in the form of an answer message. The measurement of terminating FG Access call usage ends when the entry switch receives or sends a release message, whichever occurs first.

SECTION 5 - SWITCHED ACCESS RATES, (CONT'D)

5.4 Rates and Charges

5.4.1 Common Line Access Service

A. Carrier Common Line Charge

- Per Originating Minute

Note 1

- Per Terminating Minute

Note 1

Note 1: All access minutes are billed at a single per minute access rate found in Section 5.4.3.A, Local Switching. This composite rate includes the elements traditionally billed as Carrier Common Line.

SECTION 5 - SWITCHED ACCESS RATES, (CONT'D)

5.4 Rates and Charges, (cont'd)

5.4.2 Switched Transport

| | | | | | |
|----|-------------------------------|---------------------------------------|---------------------|------------------------------|-----|
| A. | Entrance Facility | | <u>Nonrecurring</u> | <u>Monthly Recurring</u> | |
| | | First DS1 | ICB | ICB | |
| | | Additional DS1s | ICB | ICB | |
| B. | Direct-Trunked Transport | | <u>Nonrecurring</u> | <u>Monthly Recurring</u> | |
| | 1. | Direct Transport | | | |
| | | | Per DS1 | ICB | ICB |
| | | | Per DS1, per Mile | ICB | ICB |
| | 2. | Dedicated Trunk Port | | | |
| | | | Per DS1 Port | ICB | ICB |
| | C. | Common Transport | | | |
| 1. | | Installation | | <u>Nonrecurring</u> | |
| | | | First Trunk | | ICB |
| | | | Additional Trunks | | ICB |
| 2. | | Tandem Switched, per Minute | | Note 1 | |
| 3. | | Tandem Switched, per Minute, per Mile | | Note 1 | |
| 4. | | Tandem Switching, per Minute | | Note 1 | |
| 5. | | Common Multiplexing, per Minute | | Note 1 | |
| 6. | Common Trunk Port, per Minute | | Note 1 | | |

Note 1: All access minutes are billed at a single per minute access rate found in Section 5.4.3A, Local Switching. This composite rate includes the elements traditionally billed as Common Transport.

SECTION 5 - SWITCHED ACCESS RATES, (CONT'D)

5.4 Rates and Charges, (cont'd)

5.4.2 Switched Transport, (cont'd)

D. Transport Interconnection Charge

1. Originating, per Minute

Note 1

Note 1: All access minutes are billed at a single per minute access rate found in Section 5.4.3A, Local Switching. This composite rate includes the elements traditionally billed as Transport Interconnection Charge and Information Surcharge.

SECTION 5 - SWITCHED ACCESS RATES, (CONT'D)

5.4 Rates and Charges, (cont'd)

5.4.3 End Office Switching

A. Local Switching

1. Service Provided via Commercial Agreement

(T)

Per Minute

| | Tandem Connect | | | Direct Connect | | |
|--|----------------|-----------------------|----------------|----------------|-----------------------|----------------|
| | Originating | Terminating | | Originating | Terminating | |
| | | 3 rd Party | End Office | | 3 rd Party | End Office |
| AT&T (former BellSouth) areas | \$0.005695 | \$0.00220880 R | \$0.00070000 R | \$0.002962 | \$0.00027580 R | \$0.00000000 R |
| AT&T (former SBC) areas | \$0.004006 | \$0.00054335 R | \$0.00070000 R | \$0.002682 | \$0.00011935 R | \$0.00000000 R |
| AT&T (former PacBell) areas | | | | | | |
| Zone 1 | \$0.008578 | \$0.00126235 R | \$0.00044000 R | \$0.003089 | \$0.00046935 R | \$0.00000000 R |
| Zone 2 | \$0.009430 | \$0.00211425 R | \$0.00070000 R | \$0.003164 | \$0.00054425 R | \$0.00000000 R |
| Zone 3 | \$0.010481 | \$0.00316480 R | \$0.00070000 R | \$0.003169 | \$0.00054880 R | \$0.00000000 R |
| AT&T (former Ameritech) areas | | | | | | |
| Zone 1 | \$0.005207 | \$0.00158970 R | \$0.00070000 R | \$0.003478 | \$0.00023170 R | \$0.00000000 R |
| Zone 2 | \$0.005253 | \$0.00163570 R | \$0.00070000 R | \$0.003478 | \$0.00023170 R | \$0.00000000 R |
| Zone 3 | \$0.005260 | \$0.00164270 R | \$0.00070000 R | \$0.003478 | \$0.00023170 R | \$0.00000000 R |
| Zone 4 | \$0.005394 | \$0.00177670 R | \$0.00070000 R | \$0.003478 | \$0.00023170 R | \$0.00000000 R |
| Zone 5 | \$0.005944 | \$0.00232670 R | \$0.00070000 R | \$0.003478 | \$0.00023170 R | \$0.00000000 R |
| CenturyLink (former Qwest) areas | | | | | | |
| Zone 1 | \$0.006080 | \$0.00309800 R | \$0.00070000 R | \$0.002445 | \$0.00021000 R | \$0.00000000 R |
| Zone 2 | \$0.006080 | \$0.00309800 R | \$0.00070000 R | \$0.002445 | \$0.00021000 R | \$0.00000000 R |
| Zone 3 | \$0.006080 | \$0.00297200 R | \$0.00070000 R | \$0.002445 | \$0.00029720 R | \$0.00000000 R |
| Verizon areas ¹ (CT, MA, NY, RI) | \$0.005692 | \$0.00159800 R | \$0.00070000 R | \$0.002406 | \$0.00000000 R | \$0.00000000 R |
| Verizon areas ¹ (DC, DE, MD, NJ, PA, VA) | \$0.005692 | \$0.00159800 R | \$0.00070000 R | \$0.002406 | \$0.00000000 R | \$0.00000000 R |
| Fairpoint areas | \$0.005495 | \$0.00163600 R | \$0.00070000 R | \$0.002264 | \$0.00000000 R | \$0.00000000 R |
| Frontier WV (former Verizon) areas | \$0.005562 | \$0.00170800 R | \$0.00071700 R | \$0.002273 | \$0.00000000 R | \$0.00000000 R |
| Frontier (former SNET areas) | \$0.005872 | \$0.00133895 R | \$0.00079496 R | \$0.003657 | \$0.00052395 R | \$0.00007896 R |
| CenturyLink (NV) areas | | | | | | |
| Zone 1 | \$0.007604 | \$0.00285660 R | \$0.00070000 R | \$0.004593 | \$0.00020860 R | \$0.00000000 R |
| Zone 2 | \$0.007708 | \$0.00296055 R | \$0.00070000 R | \$0.004606 | \$0.00022155 R | \$0.00000000 R |
| Zone 3 | \$0.007952 | \$0.00320500 R | \$0.00070000 R | \$0.004629 | \$0.00024500 R | \$0.00000000 R |
| Hawaiian Tel areas | | | | | | |
| Zone 1 | \$0.00494933 | \$0.00207260 R | \$0.00070000 R | \$0.00228393 | \$0.00021700 R | \$0.00000000 R |
| Zone 2 | \$0.00494933 | \$0.00194260 R | \$0.00070000 R | \$0.00228393 | \$0.00021700 R | \$0.00000000 R |
| Zone 3 | \$0.00494933 | \$0.00181260 R | \$0.00070000 R | \$0.00228393 | \$0.00021700 R | \$0.00000000 R |

(C)

(C)

¹Equivalent to Verizon's "Composite Terminating End Office Charge"

Some material previously found on this sheet is now found on Original Sheet 56.1

SECTION 5 - SWITCHED ACCESS RATES, (CONT'D)

5.4 Rates and Charges, (cont'd)

5.4.3 End Office Switching (cont'd.)

A. Local Switching (cont'd.)

2. Service Provided via Company Facilities

(T)

- Per Minute

| | Tandem Connect | | |
|--|----------------|-----------------------|---------------|
| | Originating | Terminating | End Office |
| | | 3 rd Party | |
| AT&T (former BellSouth) areas | \$0.003714 | \$0.0007880 R | \$0.0000000 R |
| AT&T (former SBC) areas | \$0.003599 | \$0.0001360 R | \$0.0000000 R |
| AT&T (former PacBell) areas | | | |
| Zone 1 | \$0.007669 | \$0.0003530 R | \$0.0000000 R |
| Zone 2 | \$0.007844 | \$0.0005280 R | \$0.0000000 R |
| Zone 3 | \$0.008182 | \$0.0008660 R | \$0.0000000 R |
| AT&T (former Ameritech) areas | | | |
| Zone 1 | \$0.003761 | \$0.0002740 R | \$0.0000000 R |
| Zone 2 | \$0.003775 | \$0.0002880 R | \$0.0000000 R |
| Zone 3 | \$0.003778 | \$0.0002910 R | \$0.0000000 R |
| Zone 4 | \$0.003780 | \$0.0002930 R | \$0.0000000 R |
| Zone 5 | \$0.003782 | \$0.0002950 R | \$0.0000000 R |
| CenturyLink (former Qwest) areas | \$0.003357 | \$0.0006360 R | \$0.0000000 R |
| Verizon areas ¹ (CT, MA, NY, RI) | \$0.004118 | \$0.0000240 R | \$0.0000000 R |
| Verizon areas ¹ (DC, DE, MD, NJ, PA, VA) | \$0.004118 | \$0.0000240 R | \$0.0000000 R |
| Fairpoint areas | \$0.003895 | \$0.0000360 R | \$0.0000000 R |
| Frontier WV (former Verizon) areas | \$0.003878 | \$0.0000240 R | \$0.0000240 R |
| Frontier (former SNET) areas | \$0.004714 | \$0.0001810 R | \$0.0000820 R |
| CenturyLink (NV) areas | | | |
| Zone 1 | \$0.005089 | \$0.0005960 R | \$0.0000000 R |
| Zone 2 | \$0.005126 | \$0.0006330 R | \$0.0000000 R |
| Zone 3 | \$0.005193 | \$0.0007000 R | \$0.0000000 R |
| Hawaiian Tel areas | | | |
| Zone 1 | \$0.0032489 | \$0.0006556 R | \$0.0000000 R |
| Zone 2 | \$0.0032489 | \$0.0005256 R | \$0.0000000 R |
| Zone 3 | \$0.0032489 | \$0.0003956 R | \$0.0000000 R |

(C)

(C)

B. Information Surcharge, per Minute

Note 1

Note 1: All access minutes are billed at a single per minute access rate found in Section 5.4.3A, Local Switching. This composite rate includes the elements traditionally billed as Transport Interconnection Charge and Information Surcharge.

¹Equivalent to Verizon's "Composite Terminating End Office Charge"

Some material now found on this sheet was previously found on 4th Revised Sheet 56

Transmittal No. 13

Issued: July 14, 2017

Effective: July 29, 2017

by: Gordon P. Williams, Jr. – Senior Vice President & General Counsel
2323 Grand Blvd., Suite 925
Kansas City, MO 64108

SECTION 5 - SWITCHED ACCESS RATES, (CONT'D)

5.4 Rates and Charges, (cont'd)

5.4.4 Toll-Free 8XX Data Base Query

| | |
|-----------|----------|
| Per Query | \$.0075 |
|-----------|----------|

5.4.5 Switched Access Optional Features

All Optional Features are offered on an Individual Case Basis (ICB).

SECTION 6 - MISCELLANEOUS CHARGES

6.1 Access Recovery Fee

The purpose of the Access Recovery Fee is to partially offset the Company's costs to provide services, support its infrastructure, and recover costs associated with the federally mandated reduction in carrier access rates resulting from the FCC's 2011 Universal Service Fund/Inter-carrier Compensation Reform Order.

| <u>Charge</u> | <u>MRC</u> | |
|---------------------|---|-----|
| Access Recovery Fee | \$1.24 on each Business or Residential line | (I) |

6.2 [Reserved for Future Use]

Transmittal No. 13

Issued: July 14, 2017
by: Gordon P. Williams, Jr. – Senior Vice President & General Counsel
2323 Grand Blvd., Suite 925
Kansas City, MO 64108

Effective: July 29, 2017

SECTION 6 - MISCELLANEOUS CHARGES, (CONT'D)

6.3 Presubscribed Interexchange Carrier Charge

The Presubscribed Interexchange Carrier Charge (PICC) is a monthly, flat-rated charge assessed to the interexchange carrier for each presubscribed local exchange service line or trunk. The PICC will be based on a monthly snapshot of end user accounts. No fractional debits or credits will be created. Additionally PICCs will be assessed to end user customers on "no-PIC" lines.

Centrex lines will be billed 1/9th of the multiline business rate. For Centrex groups with fewer than 9 lines, the charge will be the multiline business rate divided by the number of lines in the Centrex group.

ISDN BRI lines will be charged the non-primary residential line rate, and ISDN PRI lines will be charged 5 times the multiline business rate.

| <u>Primary Residential or Single Line Business</u> per line or trunk | <u>Non-Primary Residential</u> per line or trunk | <u>Multiline Business</u> per line or trunk |
|--|--|---|
| \$0.00 | \$0.00 | \$2.50 |

SECTION 6 - MISCELLANEOUS CHARGES, (CONT'D)

6.4 PIC Change Charge

This is a "per request" charge billed for end-users making a change to their preferred long distance service provider. The charge is waived if the end-user is choosing Birch as their preferred provider.

Nonrecurring Charge per Change: \$ 15.00

6.5 [Reserved for Future Use]

SECTION 6 - MISCELLANEOUS CHARGES, (CONT'D)

6.6 Billing Name and Address

6.6.1 Service Description

Billing Name and Address (BNA) service provides account detail of the Company's customers to interexchange carriers, operator service providers, enhanced service providers, and any other provider of interstate telecommunications services.

6.6.2 General

- A. Upon acceptance of an order for BNA service, the Company will furnish account detail for each working number submitted. Account detail consists of current data base information including the end user's billing name and billing address.
- B. Only current information which resides in the Company's data base will be provided. Customers ordering BNA service must accept BNA account detail on an "as is" basis.
- C. The Company will specify the location where requests for BNA service are to be received, and the format in which the requests are to be provided.
- D. The subscribing customer must agree that BNA information will not be resold or otherwise provided to any other person, corporation, partnership or entity, other than Customer's authorized billing agent, and that Billing Name and Address shall be used by Customer or Customer's authorized billing agent solely for:
 - 1. Billing its customers for using Customer's telecommunications services.
 - 2. Any purpose associated with the equal access requirement of United States v. AT&T, 552 F. Supp. 131 (D.D.C. 1982).
 - 3. Verification of service orders of new customers, identification of customers who have moved to a new address, fraud prevention, and similar nonmarketing purposes.

SECTION 6 - MISCELLANEOUS CHARGES, (CONT'D)

6.6 Billing Name and Address (Cont'd)

6.6.2 General (Cont'd)

For calling card calls and collect and third party billed calls, Billing Name and Address for ANI service is not available on accounts of nonpublished/unlisted end users who, by request to the Company (which request may be submitted at any time), have specified that such information not be released.

E. Manual Request

1. At the customer's option, the Company will provide BNA via manual request procedures.
2. BNA service information will be provided by the Company in standard paper format via facsimile or first class U.S. mail.
3. Wherever possible, the Company will provide Billing Name and Address for ANI data no later than ten (10) business days from the date of receipt of the customer's request. Availability of data may be delayed if errors exist in the request received from the customer.
4. In situations where the customer requests more than forty (40) BNA records on a single order, the Company will provide the requested BNA information in a time frame mutually agreed to by the customer and the Company.

F. Mechanized Request

1. At the customer's option, the Company will provide BNA, subject to procedures established for Customer Account Record Exchange (CARE).
2. The customer will submit its requests through proper CARE procedures, as revised or amended.

SECTION 6 - MISCELLANEOUS CHARGES, (CONT'D)

6.6 Billing Name and Address (Cont'd)

6.6.3 Rate Regulations

The number of BNA records for which charges apply will be accumulated by the Company, and billed to the customer on a monthly basis at the rates set forth in 6.6.4 following.

6.6.4 Rates and Charges

| | | BNA Request <u>Manual</u> | BNA Request <u>Mechanized</u> |
|----------------------------------|-------------------|---------------------------------|-------------------------------------|
| Billing Name and Address for ANI | | | |
| - | Per ANI Requested | \$1.00 | ICB |

SECTION 6 - MISCELLANEOUS CHARGES, (CONT'D)

6.7 Local Number Portability (LNP)

Local Number Portability (LNP) allows, where facilities permit: (1) a local exchange telephone service customer to maintain the same Directory Number (DN) when changing from one telecommunications service provider to another while remaining at the same location; and (2) callers to complete calls to numbers that have been ported. This capability has been activated on a switch specific basis as specified in the Local Exchange Routing Guide (LERG) and/or the National Exchange Carrier Association Inc., F.C.C. No. 4. Tariff.

6.7.1 Local Number Portability Query Description

- A. LNP Query (LNPQ) is an advanced intelligent network capability which utilizes the common channel signaling network to query a database to secure network routing instructions before completion of a call. This database contains the Location Routing Number (LRN) that identifies the switch of the Local Service Provider that serves a customer with a ported DN. The LRN is used to direct the call to the correct network switching element for completion to the end user customer. Where more than one network is involved in completing the call, the network prior to the termination (i.e., the N-1 Network) is normally responsible for querying a LNP database to secure the LRN which is then used in routing the call. In some network arrangements, a third-party's tandem may be interposed between the N-1 carrier and the terminating network.
- B. Where the carrier does not perform a database query, and delivers a call directly to a switch in the Company's network for a NXX designated as a number portable code in the Local Exchange Routing Guide and National Exchange Carrier Association Inc. F.C.C. No. 4, the Company may perform a query for the carrier delivering the call to the Company and bill that carrier a LNP Query charge as described herein.
- C. When the Company is the first point of switching for terminating traffic to another local exchange carrier (e.g., a Company tandem switch), the Company will perform the query on behalf of the carrier delivering the call to the Company and bill that carrier a LNP Query charge as shown herein.

SECTION 6 - MISCELLANEOUS CHARGES, (CONT'D)

6.7 Local Number Portability (LNP) (Cont'd)

6.7.2 Local Number Portability Query Arrangements

- A. There are two arrangements of LNPQ available through the Company's network:
- LNP Query-Tandem
 - LNP Query-End Office
- B. Following is a detailed description of the available service application.
1. When the Company performs a query on behalf of a carrier delivering the call to the Company, the Company's end office or tandem switch will suspend call processing, formulate and launch a query via the common channel signaling network to a LNP database to obtain information necessary to route calls to numbers in portable NXX codes. When the necessary routing information has been returned from the LNP database to the switch originating the query, call processing is resumed and the call is routed to the correct network switching element for completion to the called party.
 2. When a Company tandem switch performs the query on behalf of a carrier, a LNP Query-Tandem charge is applied whenever the call is to a NXX designated as a number portable code in the Local Exchange Routing Guide and/or National Exchange Carrier Association Inc. F.C.C. No. 4. Tariff.
 3. When a Company end office switch performs the query on behalf of a carrier, a LNP Query-End Office charge will apply when the called Directory Number has ported out of the Company switch.

SECTION 6 - MISCELLANEOUS CHARGES, (CONT'D)

6.7 Local Number Portability (LNP) (Cont'd)

6.7.3 Limitations

LNP is used on a call-by-call basis only for routing calls to number portable NXX codes, and cannot be used for purposes other than those described herein unless expressly authorized in writing by the Company.

6.7.4 Local Number Portability Network Management

The Company will administer its network to ensure the provision of acceptable service levels to all telecommunications users of the Company's network services. The Company maintains the right to apply automated or manual protective controls which would generally be applied as a result of occurrences such as failure or overload of Company facilities, customer facilities, or other networks, natural disasters, mass calling, or national security demands.

6.7.5 LNPQ Rate Regulations

The rates and charges associated with LNPQ will be billed monthly, based on recorded usage. For billing purposes, each month is considered to have thirty (30) days.

A. LNPQ Rate Elements

The LNP Query rate element provides for the identification of the Location Routing Number information associated with the directory number including transport of the query to and from the database. This charge is assessed, regardless of the outcome of the query, at either a Tandem or End Office rate depending on where the query was launched.

1. LNP Query-Tandem query charges are assessed for each non-queried call delivered by a carrier to the Company Tandem to for any NXX designated as a number portable code in the Local Exchange Routing Guide and/or National Exchange Carrier Association F.C.C. No. 4. Tariff. This charge is also assessed when a carrier delivers calls to other LECs through a Company Tandem.

SECTION 6 - MISCELLANEOUS CHARGES, (CONT'D)

6.7 Local Number Portability (LNP) (Cont'd)

6.7.5 LNPQ Rate Regulations (Cont'd)

A. LNPQ Rate Elements (Cont'd)

2. LNP Query-End Office query charges are assessed to each non-queried call delivered to the Company by a carrier destined to a Directory Number that has been ported out of a Company end office switch, and the end office switch performs the query.

B. LNPQ Rates

| | |
|----------------------------------|---------|
| LNP Query-Tandem (per query) | \$0.012 |
| LNP Query-End Office (per query) | \$0.012 |

SECTION 6 - MISCELLANEOUS CHARGES, (CONT'D)

6.7 Local Number Portability (LNP) (Cont'd)

6.7.6 LNP End User Surcharge

- A. The Company will assess a monthly number-portability charge to end users served by LNP-capable switches. The charge applies to Company's end users served by LNP-capable switches effective with this tariff section, and for a period no longer than five years. The Company will assess the charge in each end office at such time as the end office becomes LNP capable.
- B. The monthly charge is assessed, as determined by the Company, to all end users or resellers of local exchange service. The LNP End User Surcharge is assessed on a per line basis except as set forth following:
1. When a customer is provided Integrated Services Digital Network-Primary Rate Interface (ISDN-PRI) that permits the provision of up to 24 voice-grade equivalent channels over a single T-1 facility, the LNP End User Surcharge for ISDN-PRI is assessed per T-1 facility;
 2. When a customer is provided PBX Service, the LNP End User Surcharge is assessed per PBX trunk;
 3. The LNP End User Surcharge is not assessed to Lifeline customers.
- C. LNP End User Surcharge Rates

The rates and charges associated with LNP End User Surcharge will be billed monthly.

| Basic, per line <u>per month</u> | ISDN-PRI, per T-1 <u>per month</u> | PBX, per trunk <u>per month</u> |
|-------------------------------------|---------------------------------------|------------------------------------|
| \$0.00 | \$0.00 | \$0.00 |

SECTION 6 - MISCELLANEOUS CHARGES, (CONT'D)

6.8 Regulatory Compliance Fee (applicable only in TN)

The Regulatory Compliance Fee covers costs associated with ongoing regulatory and compliance obligations, participation in regulatory proceedings, handling customer complaints with regulatory agencies, and negotiations with other regulated carriers.

Regulatory Compliance Fee \$0.75

6.9 Universal Service Fund

6.9.1 Interstate and International Revenue Factor

For the purpose of allocating a portion of bundled local exchange service revenue to the interstate jurisdiction, the company derives, on a quarterly basis, an Interstate and International Revenue Factor (IIF). This factor is the percentage interstate and international revenue comprises of total regulated revenue. Interstate and International revenue includes usage-based interstate/international long distance charges, and allowance-based usage priced out at standard usage rates. The IIF is reviewed quarterly and is available at www.accesscomm.com/about/billaddress.aspx.

6.9.2 Universal Service Fund Pass-Through

In connection with the FCC's Universal Service Orders, Birch will pay a percentage of its retail revenues to support the Universal Service Fund (USF). Birch will pass-through the USF assessment to its customers by assessing a charge applicable against all retail interstate and international revenue, including usage and non-usage revenue. Retail interstate and international revenue will be derived, in part, by the company's IIF identified in section 6.9.1.

This surcharge is in addition to standard usage charges and any applicable service charges and surcharges associated with the Company's service. The Company's Universal Service Fee factor will match the relevant quarterly Universal Service Contribution Factor approved by the FCC rounded up to the nearest tenth of a percent. Universal Service Contribution Factors are available at <http://www.fcc.gov/encyclopedia/contribution-factor-quarterly-filings-universal-service-fund-usf-management-support>.

(T)
(T)

SECTION 6 - MISCELLANEOUS CHARGES, (CONT'D)

6.9 Universal Service Fund (Cont'd)

6.9.2 Universal Service Fund Pass-Through (Cont'd)

Using these special numbers, the USF charge on each customer's bill will be calculated as follows (except customers in Colorado, Iowa, Minnesota, Montana, Nebraska, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee or Wyoming):

(C)
(C)

$$\text{USF(A)} = \text{Quarterly Universal Service Fee Factor} \times \text{Sum of } [(\text{Line or Package Price} + \text{Recurring Feature Charges} + \text{Facilities Charge/s} + \text{Regulatory Compliance Fee} + \text{Carrier Access Recovery Charge}) \times \text{IIF}] + \text{Interstate LD Charges} + \text{International LD Charges}]$$

$$\text{USF(B)} = \text{Quarterly Universal Service Fee Factor} \times \text{USF(A)}$$

$$\text{USF} = \text{total USF charge} = \text{USF(A)} + \text{USF(B)}$$

For customers in Colorado, Iowa, Minnesota, Montana, Nebraska, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee or Wyoming, the USF charge on each customer's bill will be calculated as follows:

(C)
(C)

$$\text{USF(A)} = \text{Quarterly Universal Service Fee Factor} \times \text{Sum of } [\text{Facilities Charge/s} + \text{Regulatory Compliance Fee} + \text{Carrier Access Recovery Charge} + \text{Interstate LD Charges} + \text{International LD Charges} + \{\text{PF\%} \times \text{Package Price}\}]$$

$$\text{USF(B)} = \text{Quarterly Universal Service Fee Factor} \times \text{USF(A)}$$

$$\text{USF} = \text{total USF charge} = \text{USF(A)} + \text{USF(B)}$$

Where Package Factor (PF) = the percentage of the Package Price that comprises unbilled interstate minutes as measured across all Package lines. The PF is reviewed quarterly and is available at www.accesscomm.com/about/billaddress.aspx.

SECTION 6 - MISCELLANEOUS CHARGES, (CONT'D)

- 6.10 Facilities Charge (applicable only in Colorado, Iowa, Minnesota, Montana, Nebraska, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee or Wyoming) (C)
(C)

The Facilities Charge provides for delivery of high quality services, including connecting customers to the network, customer service and network monitoring, updating operational systems, and the construction of a facilities-based network. The Facilities Charge is applied to each line. A Supplementary Facilities Charge is also applied to each business line where there's more than one business line at the physical location. Long Distance-only numbers are subject to a Facilities Charge where there is more than one business line at the physical location.

The Supplementary Facilities Charge will be discounted on each business line by \$1.99 per month (Discount 1) where your relationship with Access meets both of the following requirements:

- has a contract with Access Integrated Networks, and
- uses Access Integrated Networks Interstate Long Distance

Where another Interstate Long Distance carrier other than Access Integrated Networks has been selected, a \$3.99 discount per month applies to the Supplementary Facilities Charge (Discount 2).

| <u>Charge</u> | <u>MRC</u> |
|---------------------------------|--|
| Facilities Charge | \$6.42 on each Business line \$7.11 on each Residential line \$3.99 on each applicable Long Distance-only number |
| Supplementary Facilities Charge | \$6.63 on each applicable Business Line \$3.99 on each applicable Long Distance-only number |
| - Discount 1 | (\$1.99) |
| - Discount 2 | (\$3.99) |

- 6.11 Carrier Access Recovery Charge (applicable only in Colorado, Iowa, Minnesota, Montana, Nebraska, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee or Wyoming) (C)
(C)

The Carrier Access Recovery Charge funds a contribution towards higher costs of interconnection with other carriers, due to the ongoing shift of network cost recovery from carrier-billed access services.

Carrier Access Recovery Charge \$0.50

Exhibit N

PUBLIC VERSION

**Before the
Federal Communications Commission
Washington, DC 20554**

| | | |
|-------------------------------------|---|-----------------------|
| In the Matter of |) | |
| |) | |
| CenturyLink Communications, LLC and |) | File No. EB-18-MD-002 |
| Level 3 Communications, LLC |) | |
| |) | |
| Complainants, |) | |
| |) | |
| v. |) | |
| |) | |
| Birch Communications, Inc., |) | |
| |) | |
| Defendant. |) | |

AFFIDAVIT OF TAMI SPOCOGEE

State of Oklahoma

Tulsa County

I, Tami Spocogee, having been duly sworn, state the following upon personal knowledge:

1. I am a citizen of the United States of America and I reside in the State of Oklahoma.
2. I am over the age of eighteen years.
3. I am a Senior Audit Consultant for TEOCO Corporation, a leading provider of planning, assurance, analytics, and optimization software solutions to communications service providers worldwide.
4. Through the TEOCO Corporation, I was engaged by CenturyLink Communications, LLC ("CenturyLink") to identify, compile, and analyze billing data, payments, tariff rates, individual rate elements, incumbent local exchange carrier ("ILEC") benchmark rates, and other details in connection with the switched access services that Birch Communications, Inc. ("Birch"), a competitive local exchange carrier, provides to interexchange carriers CenturyLink and Level 3 Communications, LLC ("Level 3"), CenturyLink's wholly-owned subsidiary.

5. Section 6 of the BellSouth interstate access tariff contains switched access charges broken down by rate elements. Collectively, when calling traverses a tandem switch, these charges add up to the following composite per-minute rates that constitute the ILEC benchmark in the BellSouth region, which equate to the eight total rate elements included in Paragraph 13 of the parties' Joint Stipulation of Fact (attached to the Formal Complaint as Exhibit A) derived from the listed BellSouth tariff sections:

| Date | Benchmark Rate | |
|-----------|----------------|-------------|
| | Origination | Termination |
| July 2014 | \$0.003494 | \$0.003417 |
| July 2015 | \$0.003494 | \$0.002343 |
| July 2016 | \$0.003494 | \$0.001268 |
| July 2017 | \$0.003494 | \$0.000568 |

6. In the BellSouth region, Section 5.4.3 of Birch's Access Services Tariff (the "Tariff") contains the following usage-based switched access rates calculated as an overall composite per-minute rate for calls that traverse a tandem switch:

| Date | Tandem Usage-Based Charges | |
|-----------|----------------------------|-------------|
| | Origination | Termination |
| July 2014 | \$0.003714 | \$0.003637 |
| July 2015 | \$0.003714 | \$0.002563 |
| July 2016 | \$0.003714 | \$0.0014880 |
| July 2017 | \$0.003714 | \$0.0007880 |

7. Comparing the rate tables in Paragraphs 5 and 6, it is readily apparent that Birch's usage-based switched access rates are slightly higher than—but nearly equal to—the benchmark rates assessed by BellSouth in the BellSouth region.
8. In addition to its usage-based switched access charges, Birch separately assesses a flat-rate \$2.50 monthly Presubscribed Interexchange Carrier Charge (the "PICC") per-line or per-trunk on multiline businesses. The PICC is imposed on CenturyLink and Level 3 through Section 6.3 of Birch's Tariff under the heading "Miscellaneous Charges."
9. When the PICC is translated into a per-minute rate and added to Birch's usage-based rates in the BellSouth region, the resulting per-minute rate for switched access services becomes almost ten times higher for CenturyLink.
10. For example, in March 2015 Birch originated and terminated over [REDACTED] minutes of traffic for CenturyLink in the BellSouth region. For these minutes, Birch billed and

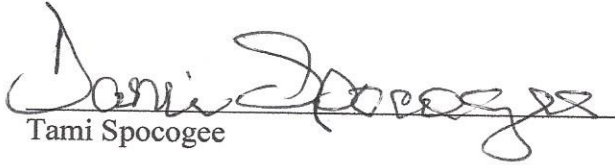
CenturyLink paid [REDACTED] for usage-based switched access services from Section 5.4.3 of the Tariff. In this same month, Birch separately billed CenturyLink [REDACTED] in PICC charges from Section 6.3 of the Tariff, which CenturyLink paid.

11. The PICC charges Birch assessed to CenturyLink and Level 3 from January 2015 to the present caused Birch's aggregate switched access rates to be billed significantly above those set forth in the BellSouth benchmark rates.
12. From March 2015 until January 2018, CenturyLink paid Birch [REDACTED] in total switched access charges, including the PICC. Attachment 1 to this Affidavit provides a month-by-month breakdown of this calculation from the February 2015 billing to the present.
13. From March 2016 until February 2018, Level 3 paid Birch [REDACTED] in total switched access charges, including the PICC. Attachment 2 to this Affidavit provides a month-by-month breakdown of this calculation from the February 2016 billing to the present.
14. As shown in Attachment 3 to this Affidavit, if the IRS interest rate for individual overpayments (set at four percent since 2016) is applied to CenturyLink's claim for [REDACTED] in overpayment damages under Count I of the Formal Complaint, it seeks [REDACTED] in compounded daily interest. As shown in Attachment 3 to this Affidavit, if the IRS interest rate for corporate overpayments (set at three percent since 2016) is applied to CenturyLink's claim for [REDACTED] in overpayment damages under Count I of the Formal Complaint, it seeks [REDACTED] in compounded daily interest.
15. As shown in Attachment 4 to this Affidavit, if the IRS interest rate for individual overpayments (set at four percent since 2016) is applied to Level 3's claim for [REDACTED] in damages under Count I of the Formal Complaint, it seeks [REDACTED] in compounded daily interest. As shown in Attachment 4 to this Affidavit, if the IRS interest rate for corporate overpayments (set at three percent since 2016) is applied to Level 3's claim for [REDACTED] in damages under Count I of the Formal Complaint, it seeks [REDACTED] in compounded daily interest.
16. As shown in Attachment 5 to this Affidavit, if the IRS interest rate for individual overpayments (set at four percent since 2016) is applied to CenturyLink's claim for [REDACTED] in damages under Count II of the Formal Complaint, it seeks [REDACTED] in compounded daily interest. As shown in Attachment 5 to this Affidavit, if the IRS interest rate for corporate overpayments (set at three percent since 2016) is applied to CenturyLink's claim for [REDACTED] in damages under Count II of the Formal Complaint, it seeks [REDACTED] in compounded daily interest.

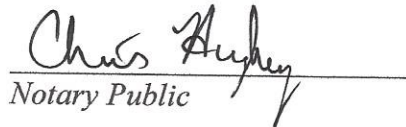
17. As shown in Attachment 6 to this Affidavit, if the IRS interest rate for individual overpayments (set at four percent since 2016) is applied to Level 3's claim for [REDACTED] in damages under Count II of the Formal Complaint, it seeks [REDACTED] in compounded daily interest. As shown in Attachment 6 to this Affidavit, if the IRS interest rate for corporate overpayments (set at three percent since 2016) is applied to Level 3's claim for [REDACTED] in damages under Count II of the Formal Complaint, it seeks [REDACTED] in compounded daily interest.
18. Assuming that late payment charges apply to PICC charges disputed by CenturyLink, which they should not, the amount Birch billed for late payment charges associated with the PICC was incorrectly calculated. The late payment charges in connection with the disputed PICC charges billed to CenturyLink from January 2017 through the present should be [REDACTED]. Attachment 7 to this Affidavit shows the monthly PICC related late payment charges as Birch should have billed them.
19. From 2014 to the present, none of the competing ILECs in Birch's serving territories, including BellSouth in the BellSouth region, had interstate access tariffs containing a PICC.

THE STATEMENTS MADE IN THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Dated this 22nd day of March, 2018


Tami Spocogee

The above and foregoing Affidavit was subscribed and sworn to or affirmed by Tami Spocogee before me this ____ day of March, 2018.


Notary Public

My commission expires: 7/23/19



Exhibit N
Attachment 1

CONFIDENTIAL MATERIALS OMITTED

Exhibit N – Attachment 1

Chart showing amounts paid/disputed by CenturyLink as to all tariffed switched access charges.

Exhibit N
Attachment 2

CONFIDENTIAL MATERIALS OMITTED

Exhibit N – Attachment 2

Chart showing amounts paid/disputed by Level 3 as to all tariffed switched access charges.

Exhibit N
Attachment 3

CONFIDENTIAL MATERIALS OMITTED

Exhibit N – Attachment 3

Chart showing interest calculations related to PICC charges paid by CenturyLink

Exhibit N
Attachment 4

CONFIDENTIAL MATERIALS OMITTED

Exhibit N – Attachment 4

Chart showing interest calculations related to PICC charges paid by Level 3

Exhibit N
Attachment 5

CONFIDENTIAL MATERIALS OMITTED

Exhibit N – Attachment 5

Chart showing interest calculations related to total tariffed switched access charges paid by CenturyLink

Exhibit N
Attachment 6

CONFIDENTIAL MATERIALS OMITTED

Exhibit N – Attachment 6

Chart showing interest calculations related to total tariffed switched access charges paid by Level 3

Exhibit N
Attachment 7

CONFIDENTIAL MATERIALS OMITTED

Exhibit N – Attachment 7

Chart showing correct calculation of PACC-related late payment charges as to CenturyLink

Exhibit O

PUBLIC VERSION

CONFIDENTIAL MATERIALS OMITTED

Exhibit O

January 6, 2017 Notice of Dispute sent from CenturyLink Communications, LLC
to Birch Communications, Inc. d/b/a Access Integrated Networks

Exhibit P

ISSUED: OCTOBER 28, 2013

EFFECTIVE: NOVEMBER 12, 2013

ACCESS SERVICE

6 - BELLSOUTH SWA SERVICE (CONT'D)

6.8 Rates and Charges (Cont'd)

6.8.1 BellSouth SWA Transport (Cont'd)

(B) BellSouth SWA Interoffice
Channel (Cont'd)

(2) BellSouth SWA
Common Transport
Zone 1 - Facility Termination

(D)

All States

| | Originating | Terminating |
|--------------------------|-------------|-------------|
| Per access minute of use | \$ 0.000168 | \$ 0.000168 |

Zone 1

All States

| | Originating | Terminating |
|------------------------------------|-------------|-------------|
| Per access minute of use, per mile | \$ 0.000020 | \$ 0.000020 |

(D)
(D)

(This page filed under Transmittal No. 0070)

All BellSouth marks contained herein and as set forth in the trademarks and servicemarks section of this
Tariff are owned by BellSouth Intellectual Property Corporation.

ISSUED: OCTOBER 28, 2013

EFFECTIVE: NOVEMBER 12, 2013

ACCESS SERVICE

6 - BELLSOUTH SWA SERVICE (CONT'D)

6.8 Rates and Charges (Cont'd)

6.8.1 BellSouth SWA Transport (Cont'd)

(B) BellSouth SWA Interoffice
Channel (Cont'd)

| | <u>Originating</u> | <u>Terminating</u> | |
|---|--------------------|--------------------|-----|
| (2) BellSouth SWA Common Transport (Cont'd) | | | (D) |
| (a) DS3 to DS1 Multiplexer Per Access Minute of Use | \$0.000380 | \$0.000380 | |
| (b) DS1 to VG Multiplexer Per Access Minute of Use associated with an analog tandem | \$0.000695 | \$0.000695 | |

(D)
(D)

ISSUED: APRIL 30, 2013

EFFECTIVE: MAY 15, 2013

ACCESS SERVICE

6 - BELLSOUTH SWA SERVICE (CONT'D)

6.8 Rates and Charges (Cont'd)

6.8.1 BellSouth SWA Transport (Cont'd)

(C) Access Tandem Switching

(1) Per access minute of use

All States

(C)

| | <u>Originating</u> | <u>Terminating</u> | (C) |
|--------|--------------------|--------------------|-----|
| Zone 1 | \$0.001145 | \$0.001145 | (C) |
| Zone 2 | \$0.001145 | \$0.001145 | (C) |
| Zone 3 | \$0.001145 | \$0.001145 | (C) |

(This page filed under Transmittal No. 0060)

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Tariff are owned by BellSouth Intellectual Property Corporation.

ISSUED: JUNE 3, 2013

EFFECTIVE: JUNE 18, 2013

ACCESS SERVICE

6 - BellSouth SWA Service (Cont'd)

6.8 Rates and Charges (Cont'd)

6.8.2 Local Switching

(A) Usage Sensitive Rates

(1) per access minute
ALL STATES

| | Originating ¹ | Terminating ¹ | Originating ² | Terminating ² |
|--|--------------------------|--------------------------|--------------------------|--------------------------|
| LS1 | \$.002089 | \$.002089 | \$.002126 | \$.002126 |
| LS2 | \$.002089 | \$.002089 | \$.002126 | \$.002126 |
| LS3 | \$.002089 | \$.002089 | \$.002126 | \$.002126 |
| LS4 | \$.002089 | \$.002089 | \$.002126 | \$.002126 |
| <u>Transitional</u> | | | | |
| BellSouth SWA FGs | \$.000940 | \$.000940 | \$.000957 | \$.000957 |
| BellSouth SWA Basic Serving Arrangement | \$.000940 | \$.000940 | \$.000957 | \$.000957 |

| | | | |
|-----|--|--------------------------|--------------------------|
| (2) | Common Trunk Port Service per each common transport trunk termination per access MOU | Originating \$.000800 | Terminating \$.000800 |
|-----|--|--------------------------|--------------------------|

(B) Dedicated End Office Trunk Port Service

| | USOC Effective until 6/10/2013 | Originating USOC Effective 6/10/2013 | Originating Monthly Rate | Terminating USOC Effective 6/10/2013 | Terminating Monthly Rate | |
|---|---|---|--------------------------------|---|--------------------------------|-----|
| - Per dedicated DS1 trunk Port required | TDE1P | 3P02X | \$ 146.93 | 3PT2X | \$ 146.93 | (T) |
| - Per dedicated DS0/VG trunk port required | TDE0P | 3P01X | \$ 9.47 | 3PT1X | \$ 9.47 | (T) |

(C) Common Switching (BellSouth SWA FG Customers Only)³

ALL STATES

FID

Hunt Group Arrangement
(available with BellSouth SWA FGA)
- Per Transmission Path Group

HML/HTG

Uniform Call Distribution
Arrangement (available with
BellSouth SWA FGA)
- Per Transmission Path Group

HTY UD

¹Rates effective from September 14, 2011 through May 31, 2013.

²Rates effective June 1, 2013.

³This Common Switching Optional Feature is not available for BellSouth SWA Basic Serving Arrangement. See 6.8.2(C) for the appropriate BSE.

ISSUED: JUNE 16, 2014

EFFECTIVE: JULY 1, 2014

ACCESS SERVICE

6 - Bell South SWA Service (Cont'd)

6.8 Rates and Charges (Cont'd)

6.8.2 Local Switching

(A) Usage Sensitive Rates

(1) per access minute

ALL STATES

| | Originating ¹ | Terminating ¹ | Originating ² | Terminating ² | |
|---|--------------------------|--------------------------|--------------------------|--------------------------|-----|
| LS1 | \$. 002089 | \$. 002089 | \$. 002126 | \$. 002849 | (I) |
| LS2 | \$. 002089 | \$. 002089 | \$. 002126 | \$. 002849 | (I) |
| LS3 | \$. 002089 | \$. 002089 | \$. 002126 | \$. 002849 | (I) |
| LS4 | \$. 002089 | \$. 002089 | \$. 002126 | \$. 002849 | (I) |
| <u>Transitional</u> | | | | | |
| Bell South SWA FGs | \$. 000940 | \$. 000940 | \$. 000957 | \$. 001282 | (I) |
| Bell South SWA Basic Serving Arrangement | \$. 000940 | \$. 000940 | \$. 000957 | \$. 001282 | (I) |

(2)

| Common Trunk Port Service per each common transport trunk termination per access MOU | Originating | Terminating | |
|---|-------------|-------------|-----|
| | \$. 000800 | \$0. 00 | (R) |

(B) Dedicated End Office Trunk Port Service

| | USOC Effective until 6/10/2013 | Originating USOC Effective 6/10/2013 | Originating Monthly Rate | Terminating USOC Effective 6/10/2013 | Terminating Monthly Rate | |
|--|---|---|--------------------------------|---|--------------------------------|-----|
| - Per dedicated DS1 trunk port required | TDE1P | 3P02X | \$ 146.93 | 3PT2X | \$ 0.00 | (R) |
| - Per dedicated DS0/VG trunk port required | TDE0P | 3P01X | \$ 9.47 | 3PT1X | \$ 0.00 | (R) |

(C) Common Switching (Bell South SWA FG Customers Only)³

ALL STATES

| | |
|---|------------|
| Hunt Group Arrangement (available with Bell South SWA FGA) | <u>FID</u> |
| - Per Transmission Path Group | HML/HTG |
| Uniform Call Distribution Arrangement (available with Bell South SWA FGA) | |
| - Per Transmission Path Group | HTY UD |

¹Rates effective from September 14, 2011 through May 31, 2013.

²Rates effective June 1, 2013.

³This Common Switching Optional Feature is not available for Bell South SWA Basic Serving Arrangement. See 6.8.2(C) for the appropriate BSE.

ISSUED: NOVEMBER 5, 2014

EFFECTIVE: NOVEMBER 20, 2014

ACCESS SERVICE

6 - Bell South SWA Service (Cont'd)

6.8 Rates and Charges (Cont'd)

6.8.2 Local Switching

(A) Usage Sensitive Rates

(1) per access minute

ALL STATES

| | Originating ¹ | Terminating ¹ | Originating ² | Terminating | (D) |
|---|--------------------------|--------------------------|--------------------------|-------------|-----|
| LS1 | \$. 002089 | \$. 002089 | \$. 002126 | \$. 002849 | |
| LS2 | \$. 002089 | \$. 002089 | \$. 002126 | \$. 002849 | |
| LS3 | \$. 002089 | \$. 002089 | \$. 002126 | \$. 002849 | |
| LS4 | \$. 002089 | \$. 002089 | \$. 002126 | \$. 002849 | |
| <u>Transitional</u> | | | | | |
| Bell South SWA FGs | \$. 000940 | \$. 000940 | \$. 000957 | \$. 001282 | |
| Bell South SWA Basic Serving Arrangement | \$. 000940 | \$. 000940 | \$. 000957 | \$. 001282 | |

(2)

| Common Trunk Port Service per each common transport trunk termination per access MOU | Originating | Terminating |
|---|-------------|-------------|
| | \$. 000800 | \$0. 00 |

(B) Dedicated End Office Trunk Port Service

| | USOC Effective until 6/10/2013 | Originating USOC Effective 6/10/2013 | Originating Monthly Rate | Terminating USOC Effective 6/10/2013 | Terminating Monthly Rate |
|--|---|---|--------------------------------|---|--------------------------------|
| - Per dedicated DS1 trunk port required | TDE1P | 3P02X | \$ 146.93 | 3PT2X | \$ 0.00 |
| - Per dedicated DS0/VG trunk port required | TDE0P | 3P01X | \$ 9.47 | 3PT1X | \$ 0.00 |

(C) Common Switching (Bell South SWA FG Customers Only)³

ALL STATES

| | |
|---|------------|
| Hunt Group Arrangement (available with Bell South SWA FGA) | <u>FID</u> |
| - Per Transmission Path Group | HML/HTG |
| Uniform Call Distribution Arrangement (available with Bell South SWA FGA) | |
| - Per Transmission Path Group | HTY UD |

¹Rates effective from September 14, 2011 through May 31, 2013.

²Rates effective June 1, 2013.

³This Common Switching Optional Feature is not available for Bell South SWA Basic Serving Arrangement. See 6.8.2(C) for the appropriate BSE.

ISSUED: DECEMBER 11, 2014

EFFECTIVE: DECEMBER 26, 2014

ACCESS SERVICE

6 - Bell South SWA Service (Cont'd)

6.8 Rates and Charges (Cont'd)

6.8.2 Local Switching

(A) Usage Sensitive Rates

(1) per access minute
ALL STATES

| | <u>Originating</u> | <u>Terminating</u> | (D) |
|-----|--------------------|--------------------|-----|
| LS1 | \$. 002126 | \$. 002849 | |
| LS2 | \$. 002126 | \$. 002849 | |
| LS3 | \$. 002126 | \$. 002849 | |
| LS4 | \$. 002126 | \$. 002849 | |

Transitional

| | | | |
|---|------------|------------|-----|
| Bell South SWA FGs | \$. 000957 | \$. 001282 | (D) |
| Bell South SWA Basic Serving Arrangement | \$. 000957 | \$. 001282 | (D) |

(2) Common Trunk Port Service
per each common transport
trunk termination per access
MOU

| <u>Originating</u> | <u>Terminating</u> |
|--------------------|--------------------|
| \$. 000800 | \$0. 00 |

(B) Dedicated End Office Trunk Port Service

| | <u>Originating USOC</u> | <u>Originating Monthly Rate</u> | <u>Terminating USOC</u> | <u>Terminating Monthly Rate</u> | (D) |
|--|-----------------------------|---|-----------------------------|---|-----|
| - Per dedicated DS1 trunk Port required | 3P02X | \$ 146. 93 | 3PT2X | \$ 0. 00 | (D) |
| - Per dedicated DS0/VG trunk port required | 3P01X | \$ 9. 47 | 3PT1X | \$ 0. 00 | (D) |

(C) Common Switching (Bell South SWA FG Customers Only) ⁽¹⁾

ALL STATES

Hunt Group Arrangement
(available with Bell South SWA FGA)
- Per Transmission Path Group

Uniform Call Distribution
Arrangement (available with
Bell South SWA FGA)
- Per Transmission Path Group

FID

HML/HTG

HTY UD

⁽¹⁾ This Common Switching Optional Feature is not available for Bell South SWA Basic Serving Arrangement. See Section 6.8.2(C) for the appropriate BSE.

ISSUED: SEPTEMBER 24, 2013

EFFECTIVE: OCTOBER 9, 2013

ACCESS SERVICE

6 - BellSouth SWA Service (Cont'd)

6.8 Rates and Charges (Cont'd)

6.8.3 Reserve for Future Use

6.8.4 Information Surcharge

| <u>ALL STATES</u> | <u>RATE</u> |
|-------------------------------------|-------------|
| Premium Rate Per 100 Access Minutes | \$.000000 |

(D)

6.8.5 Inside Moves*

| | <u>ALL STATES</u> | | |
|--|------------------------|--------------------------------|-------------|
| | <u>First Circuit**</u> | <u>Each Additional Circuit</u> | <u>USOC</u> |
| (A) Circuits Associated with BellSouth SWA or Special Access (a.k.a. BellSouth SPA) High Capacity (a.k.a. BellSouth SPA) service | \$50.33 | \$ 9.01 | NRBM1 |
| (B) Interface Group 6 | \$64.38 | \$15.53 | NRBM2 |
| (C) Interface Group 9 | \$57.35 | \$14.14 | NRBM3 |

6.8.6 Changes of Network Channel Interface Codes**

| <u>ALL STATES</u> | | |
|------------------------|--------------------------------|-------------|
| <u>First Circuit**</u> | <u>Each Additional Circuit</u> | <u>USOC</u> |
| \$94.28 | \$19.28 | RDG |

*Charges for all other inside moves are as set forth in 6.8.8
**Applies per order

ISSUED: SEPTEMBER 24, 2013

EFFECTIVE: OCTOBER 9, 2013

ACCESS SERVICE

3 - Carrier Common Line Access Service (Cont'd)

3.9 Rates and Charges

3.9.1 Carrier Common Line Access Charges

| <u>Premium Access</u> | <u>Rate</u> |
|---------------------------------|-------------|
| - Terminating Per Access Minute | \$ 0.000000 |
| - Originating Per Access Minute | 0.000000 |

(D)
|
(D)

(This page filed under Transmittal No. 0069)

All BellSouth marks contained herein and as set forth in the trademarks and servicemarks section of this
Tariff are owned by BellSouth Intellectual Property Corporation.

Exhibit Q

ISSUED: OCTOBER 28, 2013

EFFECTIVE: NOVEMBER 12, 2013

ACCESS SERVICE

6 - BELLSOUTH SWA SERVICE (CONT'D)

6.8 Rates and Charges (Cont'd)

6.8.1 BellSouth SWA Transport (Cont'd)

(B) BellSouth SWA Interoffice
Channel (Cont'd)

(2) BellSouth SWA
Common Transport
Zone 1 - Facility Termination

(D)

All States

| | Originating | Terminating |
|--------------------------|-------------|-------------|
| Per access minute of use | \$ 0.000168 | \$ 0.000168 |

Zone 1

All States

| | Originating | Terminating |
|------------------------------------|-------------|-------------|
| Per access minute of use, per mile | \$ 0.000020 | \$ 0.000020 |

(D)
(D)

(This page filed under Transmittal No. 0070)

All BellSouth marks contained herein and as set forth in the trademarks and servicemarks section of this
Tariff are owned by BellSouth Intellectual Property Corporation.

ISSUED: OCTOBER 28, 2013

EFFECTIVE: NOVEMBER 12, 2013

ACCESS SERVICE

6 - BELLSOUTH SWA SERVICE (CONT'D)

6.8 Rates and Charges (Cont'd)

6.8.1 BellSouth SWA Transport (Cont'd)

(B) BellSouth SWA Interoffice
Channel (Cont'd)

| | <u>Originating</u> | <u>Terminating</u> | |
|---|--------------------|--------------------|-----|
| (2) BellSouth SWA Common Transport (Cont'd) | | | (D) |
| (a) DS3 to DS1 Multiplexer Per Access Minute of Use | \$0.000380 | \$0.000380 | |
| (b) DS1 to VG Multiplexer Per Access Minute of Use associated with an analog tandem | \$0.000695 | \$0.000695 | |

(D)
(D)

ISSUED: APRIL 30, 2013

EFFECTIVE: MAY 15, 2013

ACCESS SERVICE

6 - BELLSOUTH SWA SERVICE (CONT'D)

6.8 Rates and Charges (Cont'd)

6.8.1 BellSouth SWA Transport (Cont'd)

(C) Access Tandem Switching

(1) Per access minute of use

All States

(C)

| | <u>Originating</u> | <u>Terminating</u> | (C) |
|--------|--------------------|--------------------|-----|
| Zone 1 | \$0.001145 | \$0.001145 | (C) |
| Zone 2 | \$0.001145 | \$0.001145 | (C) |
| Zone 3 | \$0.001145 | \$0.001145 | (C) |

(This page filed under Transmittal No. 0060)

All BellSouth marks contained herein and as set forth in the trademarks and servicemarks section of this
Tariff are owned by BellSouth Intellectual Property Corporation.

ISSUED: DECEMBER 11, 2014

EFFECTIVE: DECEMBER 26, 2014

ACCESS SERVICE

6 - Bell South SWA Service (Cont'd)

6.8 Rates and Charges (Cont'd)

6.8.2 Local Switching

(A) Usage Sensitive Rates

(1) per access minute
ALL STATES

| | <u>Originating</u> | <u>Terminating</u> | (D) |
|-----|--------------------|--------------------|-----|
| LS1 | \$. 002126 | \$. 002849 | |
| LS2 | \$. 002126 | \$. 002849 | |
| LS3 | \$. 002126 | \$. 002849 | |
| LS4 | \$. 002126 | \$. 002849 | |

Transitional

| | | | |
|---|------------|------------|-----|
| Bell South SWA FGs | \$. 000957 | \$. 001282 | (D) |
| Bell South SWA Basic Serving Arrangement | \$. 000957 | \$. 001282 | (D) |

(2) Common Trunk Port Service
per each common transport
trunk termination per access
MOU

| <u>Originating</u> | <u>Terminating</u> |
|--------------------|--------------------|
| \$. 000800 | \$0. 00 |

(B) Dedicated End Office Trunk Port Service

| | <u>Originating</u> <u>USOC</u> | <u>Originating</u> Monthly <u>Rate</u> | <u>Terminating</u> <u>USOC</u> | <u>Terminating</u> Monthly <u>Rate</u> | (D) |
|--|-----------------------------------|--|-----------------------------------|--|-----|
| - Per dedicated DS1 trunk Port required | 3P02X | \$ 146. 93 | 3PT2X | \$ 0. 00 | (D) |
| - Per dedicated DS0/VG trunk port required | 3P01X | \$ 9. 47 | 3PT1X | \$ 0. 00 | (D) |

(C) Common Switching (Bell South SWA FG Customers Only) ⁽¹⁾

ALL STATES

Hunt Group Arrangement
(available with Bell South SWA FGA)
- Per Transmission Path Group

FID

HML/HTG

Uniform Call Distribution
Arrangement (available with
Bell South SWA FGA)
- Per Transmission Path Group

HTY UD

⁽¹⁾ This Common Switching Optional Feature is not available for Bell South SWA Basic Serving Arrangement. See Section 6.8.2(C) for the appropriate BSE.

ISSUED: JUNE 16, 2015

EFFECTIVE: JULY 1, 2015

ACCESS SERVICE

6 - Bell South SWA Service (Cont'd)

6.8 Rates and Charges (Cont'd)

6.8.2 Local Switching

(A) Usage Sensitive Rates

(1) per access minute
ALL STATES

| | <u>Originating</u> | <u>Terminating</u> | |
|-----|--------------------|--------------------|-----|
| LS1 | \$. 002126 | \$. 001775 | (R) |
| LS2 | \$. 002126 | \$. 001775 | (R) |
| LS3 | \$. 002126 | \$. 001775 | (R) |
| LS4 | \$. 002126 | \$. 001775 | (R) |

Transitional

| | | | |
|---|------------|------------|-----|
| Bell South SWA FGs | \$. 000957 | \$. 000799 | (R) |
| Bell South SWA Basic Serving Arrangement | \$. 000957 | \$. 000799 | (R) |

(2)

| | | |
|---|--------------------|--------------------|
| Common Trunk Port Service per each common transport trunk termination per access MOU | <u>Originating</u> | <u>Terminating</u> |
| | \$. 000800 | \$0. 00 |

(B) Dedicated End Office Trunk Port Service

| | <u>Originating USOC</u> | <u>Originating Monthly Rate</u> | <u>Terminating USOC</u> | <u>Terminating Monthly Rate</u> |
|--|-----------------------------|---|-----------------------------|---|
| - Per dedicated DS1 trunk Port required | 3P02X | \$ 146. 93 | 3PT2X | \$ 0. 00 |
| - Per dedicated DS0/VG trunk port required | 3P01X | \$ 9. 47 | 3PT1X | \$ 0. 00 |

(C) Common Switching (Bell South SWA FG Customers Only) ⁽¹⁾

ALL STATES

| | |
|---|------------|
| Hunt Group Arrangement (available with Bell South SWA FGA) | <u>FID</u> |
| - Per Transmission Path Group | HML/HTG |
| Uniform Call Distribution Arrangement (available with Bell South SWA FGA) | |
| - Per Transmission Path Group | HTY UD |

⁽¹⁾ This Common Switching Optional Feature is not available for Bell South SWA Basic Serving Arrangement. See Section 6.8.2(C) for the appropriate BSE.

ISSUED: SEPTEMBER 24, 2013

EFFECTIVE: OCTOBER 9, 2013

ACCESS SERVICE

6 - BellSouth SWA Service (Cont'd)

6.8 Rates and Charges (Cont'd)

6.8.3 Reserve for Future Use

6.8.4 Information Surcharge

| <u>ALL STATES</u> | <u>RATE</u> |
|-------------------------------------|-------------|
| Premium Rate Per 100 Access Minutes | \$.000000 |

(D)

6.8.5 Inside Moves*

| | <u>ALL STATES</u> | | |
|--|------------------------|--------------------------------|-------------|
| | <u>First Circuit**</u> | <u>Each Additional Circuit</u> | <u>USOC</u> |
| (A) Circuits Associated with BellSouth SWA or Special Access (a.k.a. BellSouth SPA) High Capacity (a.k.a. BellSouth SPA) service | \$50.33 | \$ 9.01 | NRBM1 |
| (B) Interface Group 6 | \$64.38 | \$15.53 | NRBM2 |
| (C) Interface Group 9 | \$57.35 | \$14.14 | NRBM3 |

6.8.6 Changes of Network Channel Interface Codes**

| <u>ALL STATES</u> | | |
|------------------------|--------------------------------|-------------|
| <u>First Circuit**</u> | <u>Each Additional Circuit</u> | <u>USOC</u> |
| \$94.28 | \$19.28 | RDG |

*Charges for all other inside moves are as set forth in 6.8.8
**Applies per order

ISSUED: SEPTEMBER 24, 2013

EFFECTIVE: OCTOBER 9, 2013

ACCESS SERVICE

3 - Carrier Common Line Access Service (Cont'd)

3.9 Rates and Charges

3.9.1 Carrier Common Line Access Charges

| <u>Premium Access</u> | <u>Rate</u> |
|---------------------------------|-------------|
| - Terminating Per Access Minute | \$ 0.000000 |
| - Originating Per Access Minute | 0.000000 |

(D)
|
(D)

(This page filed under Transmittal No. 0069)

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Exhibit R

ISSUED: OCTOBER 28, 2013

EFFECTIVE: NOVEMBER 12, 2013

ACCESS SERVICE

6 - BELLSOUTH SWA SERVICE (CONT'D)

6.8 Rates and Charges (Cont'd)

6.8.1 BellSouth SWA Transport (Cont'd)

(B) BellSouth SWA Interoffice
Channel (Cont'd)

(2) BellSouth SWA
Common Transport
Zone 1 - Facility Termination

(D)

All States

| | Originating | Terminating |
|--------------------------|-------------|-------------|
| Per access minute of use | \$ 0.000168 | \$ 0.000168 |

Zone 1

All States

| | Originating | Terminating |
|------------------------------------|-------------|-------------|
| Per access minute of use, per mile | \$ 0.000020 | \$ 0.000020 |

(D)
(D)

(This page filed under Transmittal No. 0070)

All BellSouth marks contained herein and as set forth in the trademarks and servicemarks section of this
Tariff are owned by BellSouth Intellectual Property Corporation.

ISSUED: OCTOBER 28, 2013

EFFECTIVE: NOVEMBER 12, 2013

ACCESS SERVICE

6 - BELLSOUTH SWA SERVICE (CONT'D)

6.8 Rates and Charges (Cont'd)

6.8.1 BellSouth SWA Transport (Cont'd)

(B) BellSouth SWA Interoffice
Channel (Cont'd)

| | <u>Originating</u> | <u>Terminating</u> | |
|---|--------------------|--------------------|-----|
| (2) BellSouth SWA Common Transport (Cont'd) | | | (D) |
| (a) DS3 to DS1 Multiplexer Per Access Minute of Use | \$0.000380 | \$0.000380 | |
| (b) DS1 to VG Multiplexer Per Access Minute of Use associated with an analog tandem | \$0.000695 | \$0.000695 | |

(D)
(D)

ISSUED: APRIL 30, 2013

EFFECTIVE: MAY 15, 2013

ACCESS SERVICE

6 - BELLSOUTH SWA SERVICE (CONT'D)

6.8 Rates and Charges (Cont'd)

6.8.1 BellSouth SWA Transport (Cont'd)

(C) Access Tandem Switching

(1) Per access minute of use

All States

(C)

Originating

Terminating

(C)

Zone 1

\$0.001145

\$0.001145

(C)

Zone 2

\$0.001145

\$0.001145

(C)

Zone 3

\$0.001145

\$0.001145

(C)

(This page filed under Transmittal No. 0060)

All BellSouth marks contained herein and as set forth in the trademarks and servicemarks section of this
Tariff are owned by BellSouth Intellectual Property Corporation.

ISSUED: JUNE 16, 2015

EFFECTIVE: JULY 1, 2015

ACCESS SERVICE

6 - Bell South SWA Service (Cont'd)

6.8 Rates and Charges (Cont'd)

6.8.2 Local Switching

(A) Usage Sensitive Rates

(1) per access minute
ALL STATES

| | <u>Originating</u> | <u>Terminating</u> | |
|-----|--------------------|--------------------|-----|
| LS1 | \$. 002126 | \$. 001775 | (R) |
| LS2 | \$. 002126 | \$. 001775 | (R) |
| LS3 | \$. 002126 | \$. 001775 | (R) |
| LS4 | \$. 002126 | \$. 001775 | (R) |

Transitional

| | | | |
|---|------------|------------|-----|
| Bell South SWA FGs | \$. 000957 | \$. 000799 | (R) |
| Bell South SWA Basic Serving Arrangement | \$. 000957 | \$. 000799 | (R) |

(2)

| | | |
|---|--------------------|--------------------|
| Common Trunk Port Service per each common transport trunk termination per access MOU | <u>Originating</u> | <u>Terminating</u> |
| | \$. 000800 | \$0. 00 |

(B) Dedicated End Office Trunk Port Service

| | <u>Originating USOC</u> | <u>Originating Monthly Rate</u> | <u>Terminating USOC</u> | <u>Terminating Monthly Rate</u> |
|--|-----------------------------|---|-----------------------------|---|
| - Per dedicated DS1 trunk Port required | 3P02X | \$ 146. 93 | 3PT2X | \$ 0. 00 |
| - Per dedicated DS0/VG trunk port required | 3P01X | \$ 9. 47 | 3PT1X | \$ 0. 00 |

(C) Common Switching (Bell South SWA FG Customers Only)⁽¹⁾

ALL STATES

| | |
|---|------------|
| Hunt Group Arrangement (available with Bell South SWA FGA) | <u>FID</u> |
| - Per Transmission Path Group | HML/HTG |
| Uniform Call Distribution Arrangement (available with Bell South SWA FGA) | |
| - Per Transmission Path Group | HTY UD |

⁽¹⁾ This Common Switching Optional Feature is not available for Bell South SWA Basic Serving Arrangement. See Section 6.8.2(C) for the appropriate BSE.

ISSUED: JUNE 16, 2016

EFFECTIVE: JULY 1, 2016

ACCESS SERVICE

6 - Bell South SWA Service (Cont'd)

6.8 Rates and Charges (Cont'd)

6.8.2 Local Switching

(A) Usage Sensitive Rates

(1) per access minute
ALL STATES

| | <u>Originating</u> | <u>Terminating</u> | |
|-----|--------------------|--------------------|-----|
| LS1 | \$. 002126 | \$. 000700 | (R) |
| LS2 | \$. 002126 | \$. 000700 | (R) |
| LS3 | \$. 002126 | \$. 000700 | (R) |
| LS4 | \$. 002126 | \$. 000700 | (R) |

Transitional

| | | | |
|---|------------|------------|-----|
| Bell South SWA FGs | \$. 000957 | \$. 000315 | (R) |
| Bell South SWA Basic Serving Arrangement | \$. 000957 | \$. 000315 | (R) |

(2)

| Common Trunk Port Service per each common transport trunk termination per access MOU | <u>Originating</u> | <u>Terminating</u> |
|---|--------------------|--------------------|
| | \$. 000800 | \$0. 00 |

(B) Dedicated End Office Trunk Port Service

| | <u>Originating</u> <u>USOC</u> | <u>Originating</u> Monthly <u>Rate</u> | <u>Terminating</u> <u>USOC</u> | <u>Terminating</u> Monthly <u>Rate</u> |
|--|-----------------------------------|--|-----------------------------------|--|
| - Per dedicated DS1 trunk Port required | 3P02X | \$ 146. 93 | 3PT2X | \$ 0. 00 |
| - Per dedicated DS0/VG trunk port required | 3P01X | \$ 9. 47 | 3PT1X | \$ 0. 00 |

(C) Common Switching (Bell South SWA FG Customers Only) ⁽¹⁾

ALL STATES

| | |
|---|------------|
| Hunt Group Arrangement (available with Bell South SWA FGA) | <u>FID</u> |
| - Per Transmission Path Group | HML/HTG |
| Uniform Call Distribution Arrangement (available with Bell South SWA FGA) | |
| - Per Transmission Path Group | HTY UD |

⁽¹⁾ This Common Switching Optional Feature is not available for Bell South SWA Basic Serving Arrangement. See Section 6.8.2(C) for the appropriate BSE.

ISSUED: SEPTEMBER 24, 2013

EFFECTIVE: OCTOBER 9, 2013

ACCESS SERVICE

6 - BellSouth SWA Service (Cont'd)

6.8 Rates and Charges (Cont'd)

6.8.3 Reserve for Future Use

6.8.4 Information Surcharge

| <u>ALL STATES</u> | <u>RATE</u> |
|-------------------------------------|-------------|
| Premium Rate Per 100 Access Minutes | \$.000000 |

(D)

6.8.5 Inside Moves*

| | <u>ALL STATES</u> | | |
|--|------------------------|--------------------------------|-------------|
| | <u>First Circuit**</u> | <u>Each Additional Circuit</u> | <u>USOC</u> |
| (A) Circuits Associated with BellSouth SWA or Special Access (a.k.a. BellSouth SPA) High Capacity (a.k.a. BellSouth SPA) service | \$50.33 | \$ 9.01 | NRBM1 |
| (B) Interface Group 6 | \$64.38 | \$15.53 | NRBM2 |
| (C) Interface Group 9 | \$57.35 | \$14.14 | NRBM3 |

6.8.6 Changes of Network Channel Interface Codes**

| <u>ALL STATES</u> | | |
|------------------------|--------------------------------|-------------|
| <u>First Circuit**</u> | <u>Each Additional Circuit</u> | <u>USOC</u> |
| \$94.28 | \$19.28 | RDG |

*Charges for all other inside moves are as set forth in 6.8.8
**Applies per order

ISSUED: SEPTEMBER 24, 2013

EFFECTIVE: OCTOBER 9, 2013

ACCESS SERVICE

3 - Carrier Common Line Access Service (Cont'd)

3.9 Rates and Charges

3.9.1 Carrier Common Line Access Charges

| <u>Premium Access</u> | <u>Rate</u> |
|---------------------------------|-------------|
| - Terminating Per Access Minute | \$ 0.000000 |
| - Originating Per Access Minute | 0.000000 |

(D)
|
(D)

(This page filed under Transmittal No. 0069)

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Exhibit S

ISSUED: OCTOBER 28, 2013

EFFECTIVE: NOVEMBER 12, 2013

ACCESS SERVICE

6 - BELLSOUTH SWA SERVICE (CONT'D)

6.8 Rates and Charges (Cont'd)

6.8.1 BellSouth SWA Transport (Cont'd)

(B) BellSouth SWA Interoffice
Channel (Cont'd)

(2) BellSouth SWA
Common Transport
Zone 1 - Facility Termination

(D)

All States

| | Originating | Terminating |
|--------------------------|-------------|-------------|
| Per access minute of use | \$ 0.000168 | \$ 0.000168 |

Zone 1

All States

| | Originating | Terminating |
|------------------------------------|-------------|-------------|
| Per access minute of use, per mile | \$ 0.000020 | \$ 0.000020 |

(D)
(D)

(This page filed under Transmittal No. 0070)

All BellSouth marks contained herein and as set forth in the trademarks and servicemarks section of this
Tariff are owned by BellSouth Intellectual Property Corporation.

ISSUED: JUNE 7, 2017

EFFECTIVE: JUNE 22, 2017

ACCESS SERVICE

6 - BELLSOUTH SWA SERVICE (CONT'D)

6.8 Rates and Charges (Cont'd)

6.8.1 BellSouth SWA Transport (Cont'd)

(B) BellSouth SWA Interoffice
Channel (Cont'd)

(2) BellSouth SWA
Common Transport
Zone 1 - Facility Termination

All States
Per access minute of use

| | | | |
|-------------|---|---|--------------------------|
| Originating | Terminating to non-Telephone Company 3rd party locations | Terminating to Telephone Company's own end office | (N) (N) (N) (N) |
| \$ 0.000168 | \$ 0.000168 | \$0.000168 | (N) |

Zone 1

All States
Per access minute of use, per mile

| | | | |
|-------------|---|---|--------------------------|
| Originating | Terminating to non-Telephone Company 3rd party locations | Terminating to Telephone Company's own end office | (N) (N) (N) (N) |
| \$ 0.000020 | \$ 0.000020 | \$0.000020 | (N) |

(This page filed under Transmittal No. 129)

All BellSouth marks contained herein and as set forth in the trademarks and servicemarks section of this
Tariff are owned by BellSouth Intellectual Property Corporation.

ISSUED: JUNE 16, 2017

EFFECTIVE: JULY 1, 2017

ACCESS SERVICE

6 - BELLSOUTH SWA SERVICE (CONT'D)

6.8 Rates and Charges (Cont'd)

6.8.1 BellSouth SWA Transport (Cont'd)

(B) BellSouth SWA Interoffice
Channel (Cont'd)

(2) BellSouth SWA
Common Transport
Zone 1 - Facility Termination

All States
Per access minute of use

| Originating | Terminating to non-Telephone Company 3rd party locations | Terminating to Telephone Company's own end office | |
|-------------|---|---|-----|
| \$ 0.000168 | \$ 0.000168 | \$0.00 | (R) |

Zone 1

All States
Per access minute of use, per mile

| Originating | Terminating to non-Telephone Company 3rd party locations | Terminating to Telephone Company's own end office | |
|-------------|---|---|-----|
| \$ 0.000020 | \$ 0.000020 | \$0.00 | (R) |

(This page filed under Transmittal No. 130)

All BellSouth marks contained herein and as set forth in the trademarks and servicemarks section of this
Tariff are owned by BellSouth Intellectual Property Corporation.

ISSUED: OCTOBER 28, 2013

EFFECTIVE: NOVEMBER 12, 2013

ACCESS SERVICE

6 - BELLSOUTH SWA SERVICE (CONT'D)

6.8 Rates and Charges (Cont'd)

6.8.1 BellSouth SWA Transport (Cont'd)

(B) BellSouth SWA Interoffice
Channel (Cont'd)

| | <u>Originating</u> | <u>Terminating</u> | |
|---|--------------------|--------------------|-----|
| (2) BellSouth SWA Common Transport (Cont'd) | | | (D) |
| (a) DS3 to DS1 Multiplexer Per Access Minute of Use | \$0.000380 | \$0.000380 | |
| (b) DS1 to VG Multiplexer Per Access Minute of Use associated with an analog tandem | \$0.000695 | \$0.000695 | |

(D)
(D)

ISSUED: JUNE 7, 2017

EFFECTIVE: JUNE 22, 2017

ACCESS SERVICE

6 - BELLSOUTH SWA SERVICE (CONT'D)

6.8 Rates and Charges (Cont'd)

6.8.1 BellSouth SWA Transport (Cont'd)

(B) BellSouth SWA Interoffice
Channel (Cont'd)

| | Originating | Terminating to non-Telephone Company 3rd party locations | Terminating to Telephone Company's own end office | (N) (N) (N) (N) |
|---|-------------|---|---|--------------------------|
| (2) BellSouth SWA Common Transport (Cont'd) | | | | |
| (a) DS3 to DS1 Multiplexer Per Access Minute of Use | \$0.000380 | \$0.000380 | \$0.000380 | (N) |
| (b) DS1 to VG Multiplexer Per Access Minute of Use associated with an analog tandem | \$0.000695 | \$0.000695 | \$0.000695 | (N) |

(This page filed under Transmittal No. 129)

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Tariff are owned by BellSouth Intellectual Property Corporation.

ISSUED: JUNE 16, 2017

EFFECTIVE: JULY 1, 2017

ACCESS SERVICE

6 - BELLSOUTH SWA SERVICE (CONT'D)

6.8 Rates and Charges (Cont'd)

6.8.1 BellSouth SWA Transport (Cont'd)

(B) BellSouth SWA Interoffice
Channel (Cont'd)

| | Originating | Terminating to non-Telephone Company 3rd party locations | Terminating to Telephone Company's own end office | |
|---|-------------|---|---|-----|
| (2) BellSouth SWA Common Transport (Cont'd) | | | | |
| (a) DS3 to DS1 Multiplexer Per Access Minute of Use | \$0.000380 | \$0.000380 | \$0.00 | (R) |
| (b) DS1 to VG Multiplexer Per Access Minute of Use associated with an analog tandem | \$0.000695 | \$0.000695 | \$0.00 | (R) |

(This page filed under Transmittal No. 130)

All BellSouth marks contained herein and as set forth in the trademarks and servicemarks section of this
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ISSUED: APRIL 30, 2013

EFFECTIVE: MAY 15, 2013

ACCESS SERVICE

6 - BELLSOUTH SWA SERVICE (CONT'D)

6.8 Rates and Charges (Cont'd)

6.8.1 BellSouth SWA Transport (Cont'd)

(C) Access Tandem Switching

(1) Per access minute of use

All States

(C)

Originating

Terminating

(C)

Zone 1

\$0.001145

\$0.001145

(C)

Zone 2

\$0.001145

\$0.001145

(C)

Zone 3

\$0.001145

\$0.001145

(C)

(This page filed under Transmittal No. 0060)

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ISSUED: JUNE 7, 2017

EFFECTIVE: JUNE 22, 2017

ACCESS SERVICE

6 - BELLSOUTH SWA SERVICE (CONT'D)

6.8 Rates and Charges (Cont'd)

6.8.1 BellSouth SWA Transport (Cont'd)

(C) Access Tandem Switching

(1) Per access minute of use

All States

| | Originating | Terminating to non-Telephone Company 3rd party locations | Terminating to Telephone Company's own end office | (N) (N) (N) (N) |
|--------|-------------|---|---|--------------------------|
| Zone 1 | \$0.001145 | \$0.001145 | \$0.001145 | (N) |
| Zone 2 | \$0.001145 | \$0.001145 | \$0.001145 | (N) |
| Zone 3 | \$0.001145 | \$0.001145 | \$0.001145 | (N) |

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All BellSouth marks contained herein and as set forth in the trademarks and servicemarks section of this
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ISSUED: JUNE 16, 2017

EFFECTIVE: JULY 1, 2017

ACCESS SERVICE

6 - BELLSOUTH SWA SERVICE (CONT'D)

6.8 Rates and Charges (Cont'd)

6.8.1 BellSouth SWA Transport (Cont'd)

(C) Access Tandem Switching

(1) Per access minute of use

All States

| | Originating | Terminating to non-Telephone Company 3rd party locations | Terminating to Telephone Company's own end office | |
|--------|-------------|---|---|-----|
| Zone 1 | \$0.001145 | \$0.001145 | \$0.0007 | (R) |
| Zone 2 | \$0.001145 | \$0.001145 | \$0.0007 | (R) |
| Zone 3 | \$0.001145 | \$0.001145 | \$0.0007 | (R) |

(This page filed under Transmittal No. 130)

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ISSUED: JUNE 16, 2016

EFFECTIVE: JULY 1, 2016

ACCESS SERVICE

6 - Bell South SWA Service (Cont'd)

6.8 Rates and Charges (Cont'd)

6.8.2 Local Switching

(A) Usage Sensitive Rates

(1) per access minute
ALL STATES

| | <u>Originating</u> | <u>Terminating</u> | |
|-----|--------------------|--------------------|-----|
| LS1 | \$. 002126 | \$. 000700 | (R) |
| LS2 | \$. 002126 | \$. 000700 | (R) |
| LS3 | \$. 002126 | \$. 000700 | (R) |
| LS4 | \$. 002126 | \$. 000700 | (R) |

Transitional

| | | | |
|---|------------|------------|-----|
| Bell South SWA FGs | \$. 000957 | \$. 000315 | (R) |
| Bell South SWA Basic Serving Arrangement | \$. 000957 | \$. 000315 | (R) |

(2)

| | | |
|---|--------------------|--------------------|
| Common Trunk Port Service per each common transport trunk termination per access MOU | <u>Originating</u> | <u>Terminating</u> |
| | \$. 000800 | \$0. 00 |

(B) Dedicated End Office Trunk Port Service

| | <u>Originating</u> <u>USOC</u> | <u>Originating</u> Monthly <u>Rate</u> | <u>Terminating</u> <u>USOC</u> | <u>Terminating</u> Monthly <u>Rate</u> |
|--|-----------------------------------|--|-----------------------------------|--|
| - Per dedicated DS1 trunk Port required | 3P02X | \$ 146. 93 | 3PT2X | \$ 0. 00 |
| - Per dedicated DS0/VG trunk port required | 3P01X | \$ 9. 47 | 3PT1X | \$ 0. 00 |

(C) Common Switching (Bell South SWA FG Customers Only)⁽¹⁾

ALL STATES

| | |
|---|------------|
| Hunt Group Arrangement (available with Bell South SWA FGA) | <u>FID</u> |
| - Per Transmission Path Group | HML/HTG |
| Uniform Call Distribution Arrangement (available with Bell South SWA FGA) | |
| - Per Transmission Path Group | HTY UD |

⁽¹⁾ This Common Switching Optional Feature is not available for Bell South SWA Basic Serving Arrangement. See Section 6.8.2(C) for the appropriate BSE.

ISSUED: JUNE 16, 2017

EFFECTIVE: JULY 1, 2017

ACCESS SERVICE

6 - Bell South SWA Service (Cont'd)

6.8 Rates and Charges (Cont'd)

6.8.2 Local Switching

(A) Usage Sensitive Rates

(1) per access minute
ALL STATES

| | <u>Originating</u> | <u>Terminating</u> | |
|-----|--------------------|--------------------|-----|
| LS1 | \$.002126 | \$.00 | (R) |
| LS2 | \$.002126 | \$.00 | (R) |
| LS3 | \$.002126 | \$.00 | (R) |
| LS4 | \$.002126 | \$.00 | (R) |

Transitional

| | | | |
|---|-----------|-------|-----|
| Bell South SWA FGs | \$.000957 | \$.00 | (R) |
| Bell South SWA Basic Serving Arrangement | \$.000957 | \$.00 | (R) |

(2)

| Common Trunk Port Service per each common transport trunk termination per access MOU | <u>Originating</u> | <u>Terminating</u> |
|---|--------------------|--------------------|
| | \$.000800 | \$0.00 |

(B) Dedicated End Office Trunk Port Service

| | <u>Originating USOC</u> | <u>Originating Monthly Rate</u> | <u>Terminating USOC</u> | <u>Terminating Monthly Rate</u> |
|--|-----------------------------|---|-----------------------------|---|
| - Per dedicated DS1 trunk Port required | 3P02X | \$ 146.93 | 3PT2X | \$ 0.00 |
| - Per dedicated DS0/VG trunk port required | 3P01X | \$ 9.47 | 3PT1X | \$ 0.00 |

(C) Common Switching (Bell South SWA FG Customers Only)⁽¹⁾

ALL STATES

| | |
|---|------------|
| Hunt Group Arrangement (available with Bell South SWA FGA) | <u>FID</u> |
| - Per Transmission Path Group | HML/HTG |
| Uniform Call Distribution Arrangement (available with Bell South SWA FGA) | |
| - Per Transmission Path Group | HTY UD |

⁽¹⁾ This Common Switching Optional Feature is not available for Bell South SWA Basic Serving Arrangement. See Section 6.8.2(C) for the appropriate BSE.

ISSUED: SEPTEMBER 24, 2013

EFFECTIVE: OCTOBER 9, 2013

ACCESS SERVICE

6 - BellSouth SWA Service (Cont'd)

6.8 Rates and Charges (Cont'd)

6.8.3 Reserve for Future Use

6.8.4 Information Surcharge

| <u>ALL STATES</u> | <u>RATE</u> |
|-------------------------------------|-------------|
| Premium Rate Per 100 Access Minutes | \$.000000 |

(D)

6.8.5 Inside Moves*

| | <u>ALL STATES</u> | | |
|--|------------------------|--------------------------------|-------------|
| | <u>First Circuit**</u> | <u>Each Additional Circuit</u> | <u>USOC</u> |
| (A) Circuits Associated with BellSouth SWA or Special Access (a.k.a. BellSouth SPA) High Capacity (a.k.a. BellSouth SPA) service | \$50.33 | \$ 9.01 | NRBM1 |
| (B) Interface Group 6 | \$64.38 | \$15.53 | NRBM2 |
| (C) Interface Group 9 | \$57.35 | \$14.14 | NRBM3 |

6.8.6 Changes of Network Channel Interface Codes**

| <u>ALL STATES</u> | | |
|------------------------|--------------------------------|-------------|
| <u>First Circuit**</u> | <u>Each Additional Circuit</u> | <u>USOC</u> |
| \$94.28 | \$19.28 | RDG |

*Charges for all other inside moves are as set forth in 6.8.8
**Applies per order

ISSUED: SEPTEMBER 24, 2013

EFFECTIVE: OCTOBER 9, 2013

ACCESS SERVICE

3 - Carrier Common Line Access Service (Cont'd)

3.9 Rates and Charges

3.9.1 Carrier Common Line Access Charges

| <u>Premium Access</u> | <u>Rate</u> |
|---------------------------------|-------------|
| - Terminating Per Access Minute | \$ 0.000000 |
| - Originating Per Access Minute | 0.000000 |

(D)
|
(D)

(This page filed under Transmittal No. 0069)

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